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TEEVADHARA

A JOURNAL OF CHRISTIAN INTERPRETATION

A NEW APPROACH TO MARRIAGE BREAKDOWN

**DO JESUS' WORDS ON DIVORCE (LK 16:18)
ADMIT OF NO EXCEPTION?**

J. N. M. Wijngaards

PASTORAL APPROACH TO MARITAL BREAKDOWN

George Lobo

MARRIAGE AND DIVORCE IN HINDU SOCIETY

Berard Coutinho

INDISSOLUBILITY OF MARRIAGE AND PASTORAL COMPROMISE

Felix M. Podimattam

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The Fullness of Life

A NEW APPROACH TO MARRIAGE BREAKDOWN

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Editorial

The woes of innocent abandoned spouses and invalidly married Catholics have assumed enormous proportions in our day and it would be quite unchristian to close our eyes to them. In every country we meet with numerous irregular marriage situations. The vast number of those who have been abandoned or invalidly married constitutes a staggering concourse of suffering, desperation and sorrow. Persons of these categories are faced with a conflict of conscience and are excluded from the Catholic community.

The problem is urgent not only for individuals but also for the Catholic community at large. The tragic situation is generally a source of scandal to all because it is not always evident that the Church is doing all she can to assuage their woes. We, as members of the Church, have an obligation to eliminate as far as possible the sufferings of our brethren who find themselves in this situation. How can we honestly proclaim the 'good news' of joy and freedom to the world when a large number of our fellowmen are condemned to isolation and agony?

The present symposium is a modest attempt to face the problem of irregularly married Catholics who have sincerely repented. It is not meant to be more than exploratory in scope. It is offered as a contribution towards the efforts of the Church in India to confront the problem of marriage failure in our day.

Water is purer at its source than in the main stream. This issue of *Jeevadhara* discusses first the meaning of the permanence of marriage in the NT. What does modern scriptura-

scholarship say about the indissolubility of marriage in the sources of Christian revelation? J. Wijngaards tries to give an answer to this question in the first article. The second contribution, by George Lobo, proposes solutions to difficult marriage cases within the framework of the present Church law. In the third, Berard Coutinho studies marriage and divorce from the viewpoint of Indian tradition. The insights of the Indian sages cannot be dismissed simply as pagan. In this era of inter-religious dialogue, we Christians in India will do well to reflect on what our Hindu fellow-Indians sincerely think about this problem. In the final essay the sectional editor maintains that the mission of the Church with regard to marriage is to give help to individuals and the community so that they may live up to it according to the mind of Christ. This certainly includes constant proclamation of the significance of marriage and its indissolubility, marriage preparation and unceasing support for existing marriages. It must also include pastoral care for those involved in irregular marriages.

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Do Jesus' Words on Divorce (Lk. 16:18) Admit of no Exception?

During the last eight centuries the Catholic Church did not permit divorce between two Catholics who have been living together in a valid sacramental marriage. The indissolubility of such a marriage has for some become a touchstone of genuine Catholic teaching. It is an essential part of doctrine, they maintain, and in evidence for this, they will point to a declaration made by Jesus concerning divorce in Mk 10: 11-12 and Lk 16,18:

‘Everyone who divorces his wife and marries another commits adultery. And he who marries a woman divorced from her husband commits adultery’ (Lk. 16, 18; Mk. 10, 11-12).

The other New Testament passages which deal with divorce and which mention exceptions to the general indissolubility (“adultery”: Mt 5, 32; 19, 9; “if the unbelieving partner desires to separate”: 1 Cor 7, 15), are explained in such a way that they would not seem to contradict the absoluteness of Jesus’ statement. The whole conviction could be summed up in these words: “Christ himself once for all abolished divorce between Christians. Even the Church cannot change this divinely promulgated law.”

This conviction, however widespread in certain quarters, is a sad misunderstanding of the true teaching of the Gospels and of the authority of the Church. From a Scriptural point of view, Jesus’ statement cannot be validly interpreted as an absolute law, binding the future church without any exceptions. In all such statements of Jesus the Gospel presupposes that the Church of future ages has the power and the duty to make specific legislation which will often have to modify the absoluteness of the ideal expressed by Him. With regard to divorce itself, the New Testament Church already introduced such modifications on its authority. It thereby illustrated that the Church of today can and should introduce new legislation when this is required by the pastoral situation of our times.

One of the major sources of confusion is the literalistic interpretation given to one or other passage. It is connected to a one-sided idea of what fidelity to Jesus' teaching means. An attempt to illustrate this will be made in three examples in which we may contrast one of Jesus' absolute statements and the authoritative interpretation of the Church. The New Testament passages dealing with divorce will then be examined according to the same principle.

SECTION ONE :

JESUS' ABSOLUTE WORDS AND CHURCH LEGISLATION

No Gospel text presents Jesus as a lawgiver in the strict sense of the term. It is true that in the Sermon on the Mount (Mt. 5-7) Jesus' teaching is contrasted with the laws of the Old Covenant. But even here He does not give precise legal prescriptions, but an outline of the Christian ideal, Jesus himself summarizes his 'commandments' as "you should love one another as I have loved you" (Jn 15, 12). This is not a legal clause but a *principle* on which future laws could be built. Jesus' words in the Sermon on the Mount are of the same nature. Leaving one's gift at the altar one should be reconciled to an angry brother (Mt 5, 24), one should pluck out one's right eye when tempted to sin rather than indulge in it (Mt 5, 29), and go one mile with him who forces a person to go for two miles (Mt 5, 41). These are not "Laws" in any accepted legal sense, but descriptions of the ideal person Jesus wants His disciple to be.

The Christian conscience has always understood that the words of Jesus should not be taken literally as strict laws. Who has ever cut off his right hand and thrown it away "because it causes him to sin" (Mt 5, 30)? Who has ever maintained that we should indiscriminately give to any one who begs although Jesus says "Give to him who begs from you" (Mt 5, 42)? Who does not know that a "laying up of treasures" is a necessity in organized work even though Christ seems to forbid it (Mt 6, 19)? Our Christian conscience tells us that these words of Christ have to be understood in the deeper spiritual sense, and not taken as statutes of a rigid code.

The taking of oaths

In some cases the need of an implicit interpretation may not be so obvious. Consider Jesus' condemnation of oaths:

"I say to you, not to swear at all, either by heaven, for it is throne of God, or by the earth, as it is his footstool, or by Jerusalem, as it is the city of the Great King. And do not swear by your head, for you cannot make one hair white or black. Let what you say be simply 'yes' or 'no'. Anything more than this comes from evil" (5, 34-37).

Jesus says explicitly "Do not swear at all". If this is taken as an absolute command (as it seems to be when we are guided solely by the ring of his words), we would never be allowed, under any circumstance, to take an oath. However, this has not been the interpretation in the Church. If we take the official Canon Law of the Church as our norm, in its final version as promulgated by Pope Benedict XV which is still valid today, we find that much attention is given to the taking of oaths. In canon 1366ss, the conditions for the validity of oaths are spelled out. Not only is the taking of oaths permitted but the law of the Church mentions nineteen cases in which one *has* to take an oath. These cases are of frequent occurrence: clerics before ordination, diocesan consultors, officers working in the episcopal curia, those with offices in an ecclesiastical court, religious meeting in a Chapter, and those who administer Church property, are all required to take an oath. Notwithstanding the absolute statement of Jesus, the Church has, in fact, made the taking of oaths an ordinary element of its administration.

An interesting example is the case of priests (Canons) with the duty of attending choir services in our capitular churches. The law lays down (Cn 395 par 4) that someone should be appointed to keep a register in which the absence of the defaulting Canons from choir services is to be noted. This person (called the "punctator") should take up his office "after having taken an oath before the Chapter or its president with the promise to fulfil his duty faithfully".

No doubt the lesser Church laws in question testify to a zest in legalistic specification that was far from the mind of Christ. Small wonder that the Church law is being revised after Vatican II. At the same time it would be audacious to presume that the Church was wrong in allowing the taking of oaths at all. Facts prove that the universal prohibition of Mt 5, 34-37 has not been allowed but has even prescribed the taking of oaths in certain circumstances.

Precedence of Church dignitaries

In the foregoing example we have seen how a statement of Jesus can be modified in the Church by a later interpretation. May such an interpretation be tolerated? That it should be is seen from another example in which the New Testament Church itself modified one of Jesus' pronouncements. He abhorred the vanity and pride of the Pharisees.

"They love the places of honour at feasts and best seats in the synagogues, and salutations in the marketplaces, and being called Rabbi by men. But you are not to be called Rabbi, for you have one teacher and you are all brethren. And call no man your father on earth for you have one Father who is in heaven. Neither be called master, for you have one master, the Christ" (Mt 23, 6-7).

These words of Jesus seem to decree that in His Church there should be no honorific titles, nor any privilege of precedence. In actual practice we find, in the Church, many titles of honour. Canon Law, apart from solidly establishing the principle of precedence (Cn 106), lays down individual privileges in this regard in fifteen separate statutes. These rules of precedence embrace not only the various ranks of the hierarchy but also the various kinds of priests (deans, parish priests, assistants, chaplains, religious, etc.) and divers pious associations. Judging by the norms of these laws, one might say that everyone's proper place of precedence, according to presumed dignity and honour, has been fixed once and for all. Again the practice seems directly opposed to the words of Jesus.

It is undeniable that taking pride in an ecclesiastical title, or claiming precedence on account of it, goes counter to the

spirit laid down by Jesus: "He who is greatest among you will be your servant" (Mt 23, 11). On the other hand, proper order in the Church does often demand a clear understanding of where authority lies. Although an exaggerated insistence on titles and precedence violates the spirit of the Gospel, enlightened following of the rules laid down by tradition can prevent much confusion and strife. The laws of the Church were formulated after many centuries of experience and are not the outcome of misguided legalism.

In fact, the justification for establishing titles and precedence can be found in the decisions of the earliest Church themselves. Already at the time of St. Paul we find the need for clearly defined leadership. Even during his first missionary journey Paul "appointed elders *presbuteroi* in every community" (Acts 14, 23). In writing to the Corinthians, Paul presupposes some hierarchical arrangement when he says: "God has appointed in the church first apostles, second prophets, third teachers, then workers of miracles, then healers then helpers, administrators, speakers in various kind of tongues" (I Cor 12, 28). In his letter to Timothy he distinguishes bishops (1 Tim 3, 1-7) from deacons (1 Tim 3, 8-13) and "elders" (1 Tim 5, 17-22). It is clear that while establishing these offices, and laying down their duties and privileges, Paul was preparing the way for later ecclesiastical dignities.

The words of Jesus regarding the attitude of those who minister in the church, have thus been interpreted by the early Church itself as referring to the spirit of service, not to matters of external organization. The growth of the Church required that the authority and leadership of certain successors of the Apostles should be clearly visible. Honorific titles and some preferential treatment in public would seem necessary concomitants of such a recognition. The early Church did not think that the introduction of this practice was contrary to Jesus' words, however absolute they seem at first.

Apostolic means of transport

At times the New Testament community asserted its legislative authority by explicitly modifying Jesus' words. An illustration can be taken from His injunction on apostolic poverty:

“Do not take anything with you for the journey, no staff, no bag, no bread, no money. And do not have two tunics.” (Lk 9, 3).

Once more we are struck by the absoluteness of Jesus’ demand (see also Lk. 10, 4; Mt. 10, 9-10). Its severity stands out all the more when we know that Rabbis at the time of Jesus were much more lenient than He was. Although it was generally accepted that a person who fasted should not wear sandals or make use of a walking stick, the Scribes exempted explicitly all those who had to go on a journey. On no account could they imagine a person going outside a city and travelling far, leave behind such minimum equipment. But Jesus demanded this observance of His Apostles as a sign of their total detachment.

In ordinary Church practice today priests wear shoes and use all other normal amenities necessary for travel. Every minister of Christ has the duty of showing in his clothes and his general behaviour *that* simplicity and lack of worldly interest that should characterize a spiritual person. This is generally understood to be the meaning of Christ’s injunction. It would be considered incorrect if one were to deduce from Lk. 3 that Jesus had forbidden the wearing of shoes. Common sense and the practical necessity of daily life led the Church to the proper interpretation of His words.

The same factors which determine this interpretation in our own days were already at work in the early Church. The Apostles too, and their immediate successors, experienced the impossibility of fulfilling Jesus’ words according to the letter. Walking around [barefoot on the sun-beaten roads of the Middle East was a penance that could only result in hindering free movement and an effective apostolate. The early Church faced up to the conflict between this practical experience and the words of Christ. Would Christ have allowed the wearing of sandals? Would what he said in the protected region of Galilee also apply to the semi-deserts of Asia Minor? Fortunately, there were Apostles who could authoritatively interpret the mind of Christ. To them had been given the power to loosen or to bind in the name of Christ (Mt 18, 18). To them had been promised the Holy Spirit who would make them understand the true meaning of all that Christ

had taught (Jn 14, 26). It was to the Apostles that people in the early Church turned for an authoritative statement on the meaning of Jesus' orders to his ministers.

The Gospel of Mark contains the answer, a decision which may well go back to an authentic interpretation by Peter himself. In accordance with the accepted practice in those days, the decision was added to the words of Christ in the form of a modification.

"He charged them to take nothing for their journey *except a staff*. No bread, no bag, no money in their purse, *but to wear sandals*, and not to put on two tunics" (Mk 6, 8-9).

Two modifications have been made to the words of Jesus: both sandals and the staff are allowed. Mark reports Jesus' words in this form not because he does not know that Jesus had in fact also forbidden the use of the staff and sandals but because, on the strength of the interpretation of a person like Peter, he knew it to be the *mind* of Jesus that these were allowed for his contemporaries. In other words: following an explicit decision on Church authority in his days and under guidance of the Holy Spirit, the author of St. mark's Gospel relativizes the words of Jesus by explicitly allowing two exceptions.

Summary

What we can learn from the analysis of the texts that have been considered may be put together in this way:

- (a) Even though Jesus seems to be speaking in absolute and exclusive terms, we should not rush to the conclusion that no exception is possible. Jesus proclaimed principles of the Christian ideal. He did not define specific laws.
- (b) The practice of the Church helps us to understand Jesus' words. Having received all authority from Him the Church can give an authoritative interpretation which correctly expresses the mind of Christ.
- (c) The Church took authoritative decisions even during apostolic times. Some of them have been explicitly incorporated in Christian doctrine as modifications of the words of Jesus.

SECTION TWO: THE CHURCH'S POWER TO ALLOW DIVORCE

In Lk 16, 18 and Mk 10, 11-12 Jesus is quoted as categorically rejecting divorce on any ground. There is no reason to doubt the accuracy of this report. His contemporaries were divided on the grounds sufficient for divorce. Dt. 24, 1 stated that a man could divorce his wife "because he had found something indecent in her." Followers of Rabbi Shammai maintained that this referred to adultery. The disciples of Hillel, on the other hand, permitted divorce even for less serious reasons, such as a woman's inability to cook. Against this background Jesus' reply is clear. Instead of entering into the discussion and identifying himself with either of the two schools, He rejects the attitude of the Jews altogether. He scolds them for their hardness of heart which produced such legalistic disputes. True to His characteristic impatience with half-hearted solutions, He proclaims a new ideal of marriage. It is a bond that unites two persons for life. Man should not interfere with this. The question of divorce obstructs the perfect ideal of Christian marriage (Mk 10, 1-12).

This basic ideal will remain valid for all times. The making and breaking of marriages is not some secondary matter that man can indulge in at will. Christian partners should not enter into the marriage contract with the possibility of a future divorce in mind, as many of Jesus' contemporaries did. A climate of permissiveness, which tolerates divorce in a haphazard way, will affect the very nature of marriage itself. "Man must not separate, what God has joined together" (Mk. 10, 9).

The exceptive clause in Matthew

In Matthew's gospel Jesus dismisses divorce but seems to allow one exception.

"I say to you that everyone who divorces his wife, *except on the ground of unchastity*, makes her an adulteress and whoever marries a divorced woman commits adultery" (Mt. 5, 32).

"And I say to you whoever divorces his wife, *except for unchastity*, and marries another commits adultery" (Mt. 19, 9).

According to the ordinary and straightforward interpretation of these words, Jesus allows divorce in the case of "unchastity" (Greek: "porneia"). In their anxiety to harmonize the statements in Matthew with those in Mark and Luke, many Catholic exegetes have attempted amazing philological hat-tricks to prove that the exceptive clause did not mean an exception. Some like Patrizi¹, Prat² and Bonsirven³, maintain that the "unchastity" meant by Jesus was concubinage or an invalid marriage between close relatives which should, of course, be broken up. (But surely the question was about divorce in *real* marriages?) Others, like St. Thomas⁴, thought that the permitted exception refers only to the *dismissal* of the wife, not to a real divorce: Jesus only allows the husband to send away the wife without divorce, on account of adultery. (But doesn't the technical term in the passage denote divorce and not only a separation which, in any case, was not known to the Jews?). Caietan⁵ held that the clause has a "negative", not an exception sense⁵: Jesus only says he does not *speak* about adultery (Isn't this far-fetched?). Recently Vawter proposed a new translation: "notwithstanding unchastity". With this phrase Jesus is supposed to have referred to Dt. 24, 1 in the sense that, notwithstanding the Old Testament Law, he abolished all divorce⁶. (Isn't the evidence for this extraordinary interpretation far too flimsy?)

Why are we so afraid to face up to the obvious meaning of God's word? Modern scripture research offers a much more

1. F. PATRIZI, *De Interpretatione S. Scripturae*, Rome 1844, Vol. I; pg. 169.

2. F. PRAT, *Jesus Christ. Sa Vie, sa Doctrine, son Oeuvre*, Vol. II, Paris 1933, pg. 85.

3. J. BONSIIVEN, *Le Divorce dans le Nouveau Testament*, Tournai 1948.

4. THOMAS AQUINAS, *Catena Aurea in Quattuor Evangelia; Commentarium in Quattuor Evangelia*; ed. L. Vives, Paris vol. 16-20; ad locum.

5. CAIETANUS, *In Quattuor Evangelia Commentarii*, Lyons 1556, ad locum

6. B. VAWTER, "The Divorce Clauses in Mt. 5, 32 and 19, 9", *Catholic Biblical Quarterly* 16 (1954) pgs. 155-167.

simple and truthful solution⁷. In the Palestinian Church, for which St. Matthew's Gospel was written, the rejection of *all* divorce was experienced as an obstacle to the fulness of Christian life. Under the guidance of the Holy Spirit (let us never forget this:) the Apostles decided that divorce, although normally not allowed as proclaimed by Jesus in his "ideal", should be tolerated in the case of proved adultery. This, they knew, was the mind of Jesus. In accordance with the accepted practice of their times, they added to His words a modification in the form of the exceptive clause.

Matthew's Gospel, therefore, explicitly admits of adultery as a legitimate ground for divorce. This was the interpretation officially followed by Church law in the formative years of the second, third, fourth and fifth centuries⁸, Origen says: "Our Lord has permitted divorce of the marriage bond solely in the case of a wife convicted of misconduct". St. Basil prescribes that a husband may re-marry if he has dismissed his wife on account of adultery. St. Asterius wrote "marriage can be dissolved for no cause whatever, except because of death and adultery". St. Epiphanius says that fornication, adultery and other misdeeds of the wife are valid motives for divorce. Also the local Church Councils of Arles (314 AD), Vannes (461) and Agde (506) state that marriages can be dissolved if the guilt of the wife has been proved in an ecclesiastical court.

The pauline privilege

In 1 Cor. 7, 15 Paul lays down for the Church in Corinth that a married couple can be divorced, if the husband becomes Christian and the wife wishes to remain a pagan and objects to

7. R. BULTMANN, *The History of the Synoptic Tradition*, New York 1968, pgs. 132-136;

J. DUPONT, *Mariage et Divorce dans L' Evangile*, Bruges 1959;

L. SABOURIN, "The Divorce Clauses (Mt. 5, 32; 19, 9)", *Biblical Theology Bulletin* 2 (1972) pgs. 80-86.

8. A publication and commentary of the texts can be found in V. J. POSPISHIL, *Divorce and Remarriage. Towards a New Catholic Teaching*, London 1967, esp. pgs. 141-195.

continuing married life with him⁹. Paul states explicitly that this is a modification which he enacts on his own Apostolic authority:

"To the rest I say, not the Lord, that if any brother has a wife who is an unbeliever, and she consents to live with him, he should not divorce her... But if the unbelieving partner desires to separate, let it be so. In such a case the brother or sister is not bound. For God has called us to peace" (1 Cor. 7, 12-15).

It has been traditional among Catholic authors to minimize the importance of this concession made by Paul. Only between Christians, marriage is a sacrament and Jesus was speaking about the indissolubility of the sacrament, not of marriage as such, they maintain. But this is surely not in agreement with what Jesus himself said. Jesus based the indissolubility of marriage on the fact that God "from the beginning of creation made them male and female" (Mk. 10, 9: Mt. 19, 6) by His very act of creation. Jesus was therefore thinking of the indissolubility of *any* marriage, including a marriage between unbelievers, or between a believer and an unbeliever. Paul's exception is a real modification to Jesus' general statement.

Guided by the example of St. Paul, the Church has continued to allow divorce in special cases involving new converts¹⁰. One prominent example concerns polygamists who become Christian. Strictly speaking the first wife of a polygamist is his only legitimate one. In 1537 Paul III granted that a polygamist who became a Christian should receive the right to marry any of his wives, if he did not remember who the first wife was. This in fact, meant that a divorce from the real wife was permitted. In 1571 Pius V allowed a convert polygamist to divorce his first wife and marry any of his other wives, if she consented to become a Christian too. Gregory XIII decreed in 1585 that a convert

9. cf. D. L. DUNGAN, *The Sayings of Jesus in the Churches of Paul*, Philadelphia 1971, pgs, 83-131.

10. T. L. BOUSCAREN and A. C. ELLIS, *Canon Law: a Text and Commentary*, Milwaukee 1951 (on Cn 1125). pgs. 613-620.

who was separated from his first wife might contract a new marriage with a Catholic without the consent of his first wife. These and other examples show that the Church has been exercising her authority in making exceptions to the general ideal of indissoluble marriage. She knew that she possessed the power displayed by Paul in 1 Cor. 7, 15.

The Church can dissolve catholic marriages

The above considerations make it clear that *from a biblical point of view* the Church must be said to have the power to grant divorce also between Catholics. The general jurisdiction given to Peter (Mt. 16, 18-19) and to the College of Bishops (Mt. 18, 18) includes the power of rectifying or dissolving marriage. However exclusive the words of Jesus may seem in Mk. 10, 11-12 and Lk. 16, 18, the decisions of the earliest Church through the exceptive clause in Mt. 5, 32 and 19, 9 and modification of Paul (1 Cor. 7, 15) confirm this power. The way in which the later Church has applied these modifications, adds to the evidence that this interpretation is right.

It is not necessary here to discuss the much misunderstood canon 7 on marriage promulgated by the Council of Trent:

“If any one shall say that the Church errs when she taught or teaches, in accordance with the Evangelical and Apostolic doctrine, that the bond of marriage cannot be dissolved because of adultery of either spouse... let him be anathema” (Deno. no. 977).

The whole thrust of the Council's definitions in this section is against the Protestant contention that the Church has only limited authority over marriage. In view of this position she strongly re-affirms her own power in these matters. In the discussions preceding this Canon, the Fathers explicitly wanted to avoid a condemnation of earlier Church practice which had allowed divorce for reasons such as adultery. The formulation eventually agreed upon stresses that the Church has the authority to declare that marriages cannot be dissolved on account of adultery, whatever may have been decided in the past. As, in the parallel

Canons this definition confirms *the authority of the Church* rather than explains the Bible text.¹¹

The Church may decide that divorce between Catholic partners should not be allowed for the sake of the common good. If she wishes to do so she could also, by the authority given her by Christ, allow exceptions to this general law. The New Testament text convincingly proves that she has this power.

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Pastoral Approach to Marital Breakdown

A vexed problem

Marital failure is an age-old problem. The ancients were baffled by it and could find no other way of handling it than to make provision for divorce and remarriage in their laws and customs. Christianity established a new ideal of indissoluble marriage though, in practice, various Churches often made some accommodations to deal with special cases. However, by and large, the ideal was maintained. But, in the words of Jack Dominion, an expert on the question, "in the last three hundred years and particularly during the last century, there has been a gradual lessening of Christian influence and the emergence of civic codes based on secular philosophies. So the earlier solutions have been

11. A good summary of present-day discussion on this Canon can be found in V. J. POSPISHIL, o. c. pp. 62-72.

reintroduced. *Divorce is thus a return to a pre-Christian Solution to Marital failure*"¹.

Nowadays there is a strong pressure on the Churches to adopt this trend. It is not only a question of compromise with regard to ideals, but a more personal outlook on life seems to demand that the tragic predicament of many individual persons who have suffered a marital breakdown with little fault on their part, or have repented their mistake, should be seriously considered. Modern man does not appreciate sacrificing persons on the altar of what appears to him to be abstract principles.

However poignant the situation of those people who would be condemned to a lifetime of solitude or to live in a union not acknowledged by ecclesial society, we cannot forget that divorce is a 'return to a pre-Christian solution to marital failure'. Apart from the interests of children and the fact that the stability of society is involved, marriage, by its very nature, is an intimate and total self-giving implying a permanent bond and a call to life-long fidelity². Moreover, "Christian spouses, in virtue of the sacrament of matrimony, signify and partake of the mystery of that unity and fruitful love which exists between Christ and the Church."³ When the marriage covenant between two Christians is sealed by the action by which they are "as no longer two, but one flesh" (Mt. 19, 61), at least the Catholic Church has always considered their bond absolutely indissoluble.

There is good reason to hold that the *Magisterium* has never infallibly taught the absolute infallibility of marriage as a dogma of faith since the roundabout wording of the Canon in the Council of Trent is open to different interpretations.⁴ But the supreme authority of the Church even today insists on the principle of absolute indissolubility of consummated sacramental marriage. Vatican II has declared: "Sealed by mutual faithfulness

1. *Marital Breakdown*, London, Darton, Longman and Todd, 1960, p. 9.

2. Vatican II, *Gaudium et Spes*, Art. 48.

3. Vatican II, *Lumen Gentium*, Art. 11.

4. Cf. P. Fransen, in *Problems of Authority* ed. by J. M. Todd, London, Darton, Longman and Todd, 1962, pp. 75-76.

and hallowed above all by Christ's sacrament, this love remains steadfastly true in body and in mind, in bright days or dark, it will never be profaned by adultery or divorce."⁵ The Holy See during the last few years has been repeatedly reiterating this stand. There does not seem to be any chance, at least in the foreseeable future, that the Catholic Church will permit divorce in the strict sense.

But a mere formalistic or negative attitude condemning it will not meet the need of people. Everything must be done to prevent a marital breakdown or to bring about reconciliation and to find concrete solution for those who suffer from an irreparable marital failure, especially if one of the partners is already involved in a new union which for some reason should not be disturbed.

Causes of marital breakdown

"Prevention is better than cure". Recent studies on the sociology and psychology of marriage have brought to light various causes of marital failure and the ways of handling them:

1) Wrong choice of a partner and later the feeling of being let down

In the past the choice was generally made by the parents or elders. This system had its advantages in traditional society whenever the partners freely consented to the choice. But now as young couples have mostly to live on their own, a choice made by others becomes less and less suitable. Young people rightly claim the right to make their own choice. This should, however, be guided by elders, at least remotely, by the preparation of youth for marriage, by initiating them to make considered decisions on important matters and by quietly arranging meetings with the right type of the other sex.

The choice should not be directed by blind infatuation. Mere emotion or sensual attraction cannot sustain a life-long partnership. Family background, each one's outlook on life, traits of character, some community of interests and aspirations or at least the capacity of appreciating each other's interests, the right attitude of fidelity, and openness in the matter of religion and moral values, and even the health factor, should be taken into

5. *Gaudium et Spes*, Art. 49.

consideration. Inter-caste marriages may be admirable in their own way, but the partners must seriously consider whether they have the personality resources to bear with all the difficulties that are likely to arise.

Very many persons lament soon after marriage. The protasis 'If I knew' occurs frequently when they do not pay heed to warnings given by elders and friends. Nevertheless at times, someone is deceived in spite of the best care. At such times there should be redress of the situation of the wronged partner if there is no other way out of the situation.

2) Premature marriage

In a joint family structure, the disadvantage of child marriages did not appear so clearly since there was the whole group to sustain the young couple. Nowadays marriage should definitely not take place before people are able to undertake its grave responsibilities. The legal age in India (except in the case of those who marry civilly according to the provisions of the Special Marriage Act), is 18 for boys and 15 for girls. The canonical age is even lower, 16 and 14. This is generally far too low. However, merely raising the legal age will not be of much help, especially when the present law against child marriages in India is more honoured in the breach than the observance. There is need for an intense educative process so that only mature persons capable of a life-long commitment and of fulfilling their obligations, enter into this contract, *Marriage is for Grown-ups* is the apt title of a recent good book on the subject.⁶

Maturity implies sufficient self-esteem and the capability of meeting the emotional needs of the other. One should not be self-centred or have an excessive craving for protection, attention, approval or success. One should have acquired a minimum of emotional independence of one's parents.

In this connection, some pitfalls like 'shot-gun' weddings because a baby is on the way should be avoided. Even if the girl has become pregnant, marriage is to be counselled, and per-

6. By J. and L. Bird, Garden City, N.Y., Doubleday, 1969.

formed only when the partners are really willing to marry each other and there is a reasonable hope of the union becoming a success.

3) Sexual incompatibility

Sex is not everything in marriage. Still, it is an important factor in fostering mutual love. Each one must appreciate the sexual needs of the other and try to meet them in a spirit of love. Excessive demands on the part of one or prudery and inhibitions on the part of the other are a frequent source of dissatisfaction which at first may lead to infidelity and tension and ultimately to marital breakdown. Extremely minute technical explanations are often not helpful. All the same the partners should be aware of the physical and psychological aspects of sexuality of each other. While there is danger of excessive preoccupation in this matter, in most cases ignorance or indifference causes more damage. An apparently 'chaste' wife might well be the cause of the infidelity of her spouse.

4) Emotional deprivation

After the initial warmth, it often happens that couples settle down to a life of monotonous routine or each gets preoccupied with his or her own concerns. A man might be sincerely devoted to his work and think that he is doing wonderful service by keeping late hours at the place of work. A woman may get interested in some charitable activity and spend a long time on it. Meanwhile, the partner may feel neglected and deprived. If the matter is not remedied in time, serious consequences may follow. Today, many couples suffer protracted separations or are able to meet only over week-ends. The Monetary advantages of such arrangements and what they might mean in terms of emotional separation must be carefully weighed. Such employers as corporate managements of schools must give serious attention to this problem and try to remedy it as best they can. When separations are inevitable each one must be careful to keep clear of any form of infidelity and at the same time not give in too quickly to suspicions regarding the conduct of the other.

5) Conflicts regarding children

Today family planning is a necessary dimension of a happy married life. Unless this is undertaken in a spirit of common responsibility, there will be ample room for misunderstandings and tensions. The method chosen should also be reciprocally acceptable. It is the special merit of natural family planning that it fosters mutual love because it is a way of life and not merely a technique which can be used by either partner. Natural family planning must be properly understood as a joint project in which there is mutual respect and care for the other's physical reality. In cases when this way is really not feasible, a responsible decision regarding some other method must be made with mutual understanding.

"Children are really the supreme gift of marriage and contribute very substantially to the welfare of their parents."⁷ The mutual love of the couple is meant to find its fulfilment in bearing and rearing children. But the child can also be a factor of division when one finds compensation for neglect from the partner in attachment to the child or when one becomes completely preoccupied with the child. The presence of children is a great help in restoring the harmony of the parents. But the children should not be treated only as a means of the parents' welfare or be made the victims of the cold war between them. This is neither fair to the children nor good for the parents themselves.

Husband and wife must try to understand each other's point of view regarding the upbringing of the children. They must also have realistic and reasonable goals for the children's future. If one or the other values too much the snobbish education that is given in some institutions at exorbitant cost, this will lead to financial difficulties and mutual bickerings, not to speak of the harm to the children themselves.

6) Other factors

Financial strains can cause marital tensions and even a breakdown, though this is rarely the prime factor in the tragedy.

7. Vatican II, *Gaudium et Spes*, Art. 50.

The couple must come to a clear understanding regarding the use of individual and family finances in a spirit of mutual esteem, trust and freedom. This is all the more necessary when wives are becoming 'financially independent'. Money should never be allowed to come in the way of mutual love. Much will depend on one's sense of relative values.

"A man leaves his father and his mother and cleaves to his wife." (Gen. 2:24) In most cultures, this is even more true with regard to the wife. Each must realize that he or she has cast in her lot with the other, and that the 'two have become one'. Hence one's primary loyalty is to one's partner in marriage. But 'in-laws are not out-laws'. The bond of love with parents cannot be broken. Each party must appreciate the fact that the other will necessarily be concerned with the welfare of his or her family. The ideal would be to consider the other's family as one's own and share his or her love and concern. The in-laws themselves must not intrude into the marital relationship and be the cause of its disruption. They should surely show their concern and offer their services when required. But they should respect the autonomy of the new family and avoid anything that might disrupt its relationship.

Need for marriage preparation and counselling

The causes of marital breakdowns detailed above can be tackled only by a serious preparation for marriage and competent counselling. In spite of the great importance of happy marriages for individuals and society, very little is done in the way of preparing young people for this life vocation. At present, owing to the changing pattern of marriage, the need for a conscious and systematic preparation is all the more urgent. Youth must be helped to grow in maturity, to acquire self-identity and to be able to live harmoniously in inter-personal relationships. Psycho-sexual maturity, or the ability to see and treat a person of the other sex as a *person*, is an important dimension of this formation.

Education for marriage should start early in life. In fact, it is only through the experience of a happy family life with one's parents that one will be able to build up one's future

family. Sexuality of the youth must be integrated within the total personality. The boy must learn to respect womanhood as he finds it in attractive girls whom he should treat as persons. The girl must learn how to draw respect from boys. Training in meeting the emotional needs of others is an essential part of preparation for happy marriage. One must realize that one's own needs are best fulfilled by giving, by fulfilling, the needs of the other. While the right of the young people to choose their partners is respected, they should be helped to make a considered choice.

There is need for special preparation when marriage is in sight. This could be done in groups through pre-marital courses and retreats which must be well organized with the help of a competent team so that all the important aspects are adequately covered. It is good that the pastor gives individual attention to the couples when they are about to marry.

Marriage counselling can be done on an individual or on a group basis. It is not only meant to resolve difficulties. These are best forestalled by building up a proper relationship. But it is obviously required when the marriage passes through a strain. Cana Conferences, the Christian Family Movement, Marriage Encounter and the like are very helpful means of fostering growth of understanding and overcoming difficulties. However they should be adapted to the cultural pattern of various people.

There are two main phases when marital failures particularly manifest themselves.⁸ In the first five years, breakdown can be brought about by the failure to establish the necessary minimum relationship, physically and emotionally. When this stage has been traversed there may arise different stresses and strains. One stage is especially remarkable, and it arises when the personalities of the spouses develop and reveal traits which were latent till then. When each exposes new facets of himself, there will be the difficulty of adjustment. Emotional closeness itself may cause a problem by the couple's returning to childhood situations in which unresolved emotional difficulties with parental figures are re-lived, the spouse playing the role of the unsatis-

8. J. Dominion, op, cit., pp. 19-20.

factory parent. It may also happen that when children are grown up and leave the home, the parents find it difficult to face the challenge of reordering their emotional and social life.

The breakdown is never sudden. Prior to the final decision to separate, there is a period of mounting tension manifested by frequent quarrels, symptoms of physical and psychic illness like insomnia, headaches, fatigue. There may, at times, be even attempts at suicide. Mutual alienation and frustration will often lead to seeking sympathy from others or responding to proffered sympathy. The dissatisfied group of married and unmarried may turn to one another for the support and affection they are missing in their own home. Thus 'the other man or woman' will often not be the primary cause of marital breakdown, but only an accompanying or precipitating factor.

In conservative societies, the partners may hang on together in spite of a total rupture in their personal relationship. Perhaps sexual intercourse may still take place out of habit or for physical satisfaction, but bereft of all spiritual meaning. The other alternative is permanent separation. The woman generally would suffer great indignity and frustration in the home of her relatives in which she seeks refuge, while the man leads a lonely and unhappy existence, often seeking solace in drink or in the company of prostitutes. Where divorce is possible, the second union often proves equally disappointing. But in some cases it becomes tolerably successful, and this poses a special challenge to the Church's policy. Married couples need guidance at every stage, especially when the stresses are particularly grave. It is imperative to have efficient counselling services available to all who need them.

Even when serious discord has arisen, or one of the partners has proved unfaithful, reconciliation may be possible in the spirit of Christian forgiveness. Until there has been total separation and one of the partners has taken a step that inextricably involves a new relationship we should be slow in speaking of 'love being dead'. There is always the possibility of reviving a relationship which seems to be passing through unbearable strains or is even apparently broken. Fortunately, at the time when marital breakdowns seem to be more frequent than ever, effective techniques

of counselling are also being evolved. No one connected with the couple suffering from alienation should have a defeatist attitude. It is only when the breakdown is definitely irremediable, should other solutions be thought of.

A second marriage ?

Confronted with an increasing number of marital breakdowns, the Church has a double mission: to uphold prophetically the Gospel demand for the indissolubility of marriage and to be a healing reconciler of those who have suffered a tragic failure. These two roles are apparently irreconcilable, but there can be no Christian approach to the problem which does not take into account both of them. The good of individual persons must be sought in relation to the common good of society since this in turn affects the good of individuals.

Many efforts have recently been made to show that the Church must under certain conditions exercise mercy and bless a second union. For some time, the concentration was on the famous exceptive clause in Mt. 19:9; 5:32. Now a consensus is growing that Christ proposes an ideal of never marrying a second time or even makes an absolute demand of considering marriage indissoluble in the light of the Kingdom. Still, many argue that as the Gospel does not propose absolute 'juridical' norms, the Church can, and in fact must, make some accommodations to human weakness. Accordingly there is no need for the Church to dissolve the previous bond. She would only have to declare authoritatively that the previous marriage is dead and permit the spouses to make a new start.⁹

The argument is buttressed by recourse to the concept of marriage sanctioned by Vatican II. According to the Council, marriage is 'an intimate partnership of love', so it lasts only as long as intimate love lasts. When love is irretrievably lost, then marriage is 'dead' and it concerns the Church merely to recognize the fact and to take suitable action.

This is an interesting but extreme position but, as was re-

9. Cf. J. Mac Avoy, "Marriage et Divorce", *Etudes* Aug. - Sept., 1974, 269-89.

marked earlier, there is no chance that the Church will adopt it in practice in the immediate future. She seems to concentrate too much on the individual good. Though the contractual element in marriage is secondary, it cannot be altogether neglected. Further, there is the need for distinction between the call to build up the most intimate union of hearts in marriage after the model of the union between Christ and the Church, and the minimum self-gift of each to the other which is required for the validity of marriage. If the ideal is made into a norm very few would be able to enter into a valid marriage. We are aware that some would distinguish between a non-sacramental union which is open to the vicissitudes of life and a rare sacramental one which is a commitment to witness to the eternal covenant of God with humanity through Christ. Still, in this concept, a sacrament would be something too ideal and not human enough, hence limited, sharing in the mystery of salvation, (though on the part of God the offer of grace is unlimited).

What gives further strength to the argument of those who want the Church to permit a second marriage is the practice of 'dissolving' unions that are not *rata et consummata*, i.e., sacramental and consummated as such. Thus a marriage between two baptized which is not consummated as such is not considered absolutely indissoluble and can be, in fact, 'dissolved' for a good reason.

First of all, what is the basis for singling out consummated sacramental marriages and considering them totally indissoluble? Though marriage is permanent by its very nature, we can see that sacramentality, or being drawn very specially into the saving mystery of Christ and the Church, brings a new dimension to the relationship. It partakes in some way in the indissoluble bond of love between Christ and His spouse: the Church. Though one may argue that it still remains an earthly bond and hence affected by the vicissitudes of our earthly pilgrimage, there is something special regarding its firmness that has to be acknowledged. Till now the authority of the Catholic Church has considered that it is unable to intervene in such a way as to enable the partners to enter into a new union whether the intervention is called 'dissolution', 'dispensation' or merely a 'declaration of a fact'.

It is said that the Pope has the power of dissolving a non-sacramental or natural bond *in favour of the faith* i.e., whenever the act would favour Christian life of one of the partners to a new union. It is said in the old Code (and unfortunately repeated in the draft of the new), that the favour could be granted 'even if the other partner is unwilling'. This may go against natural justice in which case there cannot be a genuine 'favour of the faith'. The latest instruction of the S. Congregation for the Doctrine of the Faith on the Dissolution of Marriages in Favour of the Faith rightly requires (1) that it is impossible to obtain genuine reconciliation of the parties in the previous union; (2) that there would be no danger of public scandal or grave wonderment because of the granting of the favour; (3) that the petitioner was not the culpable cause of the breakdown of the previous legitimate union, and that the Catholic party to the new marriage did not wilfully provoke the separation; (4) that the party of the previous marriage should be questioned in as much as it is possible if he (she) does not make a reasonable objection; (5) that the party concerned adequately provides for the other and for the children.¹⁰ These conditions must be carefully observed so that no injustice is done to anyone and the granting of the favour does not look unreasonable.

For centuries it has been the practice of the Church to 'dissolve' sacramental marriages (i.e., between two baptized persons) that have not yet been *consummated*. It has always been held that the first act of intercourse by which the spouses become 'one flesh' in some way perfects the significance of marriage. It is a well known fact that in the Middle Ages there was a heated discussion whether the essence of marriage was in the 'consent' (Peter Lombard) or in the copula (Gratian), the consent only 'initiating' marriage. This is a sign that in spite of the 'Augustinian' or negative trend regarding sexuality, the marital act was given a high place in certain quarters. Pope Alexander III settled the question by declaring that mutual consent is the essence of marriage but the bond becomes absolutely indissoluble only by consummation. The symbolism of the union of Christ and the

10. See *Vidya Jyoti*, 39(1975)367. For the procedure in conducting the preparatory diocesan process, see *ibid.*, 368-71.

Church is completed by conjugal union, since the 'mutual self-giving is confirmed by the specific act of marriage.

Till now, consummation was supposed to take place by the mere physical act. It is difficult to see how a blind act performed by a drunken husband or forced upon an unwilling wife on the wedding night can make the union absolutely indissoluble. There must be at least some deliberateness. The schema of the new Code has suggested that the act must be 'human'. It is hoped that some such qualification will be adopted. Then there would be redress for cases like that of a woman who is so disgusted by the brutality of the man in sexual relations in the beginning of marriage that she escapes from him and later desires to enter into a new union.

As to the process of proving non-consummation of marriage, till recently great importance was given to physical inspection of the woman while the testimony of the partners was not given much weight. In the revised norms for the process, prime importance is rightly given to what is called the 'moral argument'. Reliable witnesses have to attest to the probity and veracity of the partners who assert that the marriage has not been consummated, which in fact means that the affirmation of the spouses is respected when it is reasonable to do so. Bodily inspection, if the woman is willing, is conducted only when it seems necessary. Otherwise, it may well be omitted.¹¹ There seems to be something like a breakthrough in this. The partners themselves are called upon to attest to a fact in their life. Their statement will be accepted if they can be considered sufficiently reliable according to the testimony of their acquaintances. This procedure will help if there is an all-round improvement in sincerity among Christians and a spirit of trust in the mind of the authorities. It is to be hoped that it will be extended to other marriage processes, especially to annulment arising from lack of proper marriage consent. The faithful should be instructed and made to realize that Church wedding is not merely a question of outward form to keep up social appearances, but a sign of God's sanctifying intervention in their lives which presupposes sincerity of heart.

11. See *Act a Apostolicae Sedis*, 64(1975)244-252.

Recently, the idea has been floated by some that consummation of marriage is a life-long process¹². Whenever marriage breaks down, it must be presumed that consummation did not take place and so the Church must 'dissolve' the marriage. This proposal is certainly interesting; it brings out the idea that marriage is not a ready-made thing but a call to build up a relationship, to bring about the fulfilment of the 'two-in-oneness.' But in the legal sense it is just asking for divorce under another name and will have to be evaluated as such. A similar concept of 'moral impotence' which will be discussed below has been strongly condemned by the Apostolic Signatura.

Declaration of nullity

Though the Church steadfastly refuses to bless a second union when the first was validly entered into, she makes provision for annulment when there is a substantial defect in the first. Of late, the causes of nullity have been extended further and further, so that it is increasingly possible to get authorization for a new marriage after getting a declaration of nullity. A lot of ingenuity has been expended by understanding experts in the field. Presumably more development may be expected so that more and more persons will be declared free from a bond which had only the appearances of a valid marriage but was radically vitiated *right from the beginning*. Here there is really no question of a second marriage since the first is found to be invalid.

There is naturally a lot of hesitation on the part of some to develop this line of thinking and judicial practice. It looks to them like a legalistic search for 'loop-holes' and evasion of the central question of the indissolubility of marriage. Backdoor methods are suspected at a time when we wish to foster Gospel sincerity. As the obtaining of declaration of nullity involves subtle juridical processes, there is a further reason for disaffection about this procedure. So some would say, "Why not frankly admit that the first marriage has failed and a second is indicated in the situations?" Insincerity should surely be shunned and excessive

12. Cf. J. Bernhard, "A propos de l'hypothese concernant la notion de 'consommation existentielle' du mariage", *Revue de Droit Canonique*, 20(1970-184-92.)

legalism equally avoided. But is the attempt to discover real causes for nullity necessarily a subterfuge or repellent legalism? It might not be as neat a solution as one would desire. But what about the *real conflict* between the Church's mission to proclaim by word and deed the Gospel demand of the absolute indissolubility of Christian marriage and her role to find concrete solutions to difficult situations? Is it really a subterfuge to discern that what appeared to be a valid marriage in fact is not so? Marital failure, especially when it takes place soon after the wedding could be a sign that something was essentially wrong right from the start. What is the harm in recognizing this?

There are three possible grounds for declaring nullity: the discovery of a *diriment* (invalidating) *impediment* for which dispensation from lawful authority was not obtained; *defect in the canonical form* required for the validity of the marriage; and *defect in the consent* of the partners. In the forthcoming Code, the number of impediments will be reduced (e. g., regarding consanguinity and affinity) and the rules for the requirement of an authorized priest will be relaxed so that these grounds for nullity will become rarer. On the other hand, the conditions for valid consent will become more stringent because of the realization that marriage is a total commitment of oneself to another for life. The discussion will be restricted to the latter. As impediments and canonical requirements for valid celebration of marriage put checks on the natural right to marry, they should be minimized as far as possible. The marked trend in this direction should be welcomed.

On the other hand, more stringent requirements for valid consent only bring out the seriousness of the marriage commitment, although even here the natural right of everyone to marry should not be lost sight of. If the qualities required for valid consent are made too strict, then it would be easier to grant declaration of nullity for those who suffer from marital failure but at the same time a great number of people would be excluded from entering into marriage. Those who are too preoccupied with finding loop-holes to get out of a difficult situation should remember that they may be barring the way to many from exercising their right to marry in the first place. In this connection the attitude of the Rota expressed in a recent article is worth

reporting: "Marriage is not just for a singularly endowed elite who are uniquely capable of an ideally perfect union, but is the common vocation of ordinary imperfect men and women who at least partially attend to what they are undertaking, so that a marriage cannot be declared null unless it is certain that one party was fundamentally incapable of fulfilling some essential obligation of marriage even in the ordinary imperfect way that ordinary imperfect couples do."¹³

The present Code promulgated in 1917 considered only such obvious nullifying flaws as ignorance, fear, total exclusion of procreation and the reservation of the right to divorce. But as psychiatry developed, ecclesiastical judges increasingly took account of mental disabilities. Now it is accepted that if a person did not have the mental capacity to *appreciate and evaluate* (not merely be aware of the essentials of marriage, there could not be valid consent. But very difficult questions still remain to be clarified. "Just how mature and balanced must a person be in order to be able to sufficiently appreciate what marriage is? Just how stable must he be to be able to undertake to fulfil the essentials of marriage? And just what are the essentials of marriage?"¹⁴ Apart from determining what are the essentials of marriage, there is need for painstakingly trying to work out the implications of various personality disorders for the validity of the marriage consent.

The draft of the new Code speaks of the following grounds for incapacity: 1) such mental illness or grave perturbation of mind that constitutes the lack of use of reason; 2) grave defect of discretion of mind regarding the rights and obligations of marriage; 3) grave psychosexual anomalies because of which one is incapable of assuming the essential obligations of marriage.

The first refers to mental diseases like schizophrenia. It is sufficient that the condition substantially existed at the time of marriage even if it was not completely manifest.

13. M. Dooley, "Marriage Annulments", *Furrow*, 26(1975)218.

14. *Ibid.*, p. 215.

The Rota seems to restrict the second clause to some permanent defect of mind which makes one incapable of making a serious or permanent commitment, e. g., psychopathia. This should be extended to *radical immaturity of* some youth who enter into hasty marriages. Mere infatuation cannot be a valid basis for marriage. Making radical immaturity, or want of discretion in youth, a ground for nullity does not go against anyone's right to marry. We have to persuade youth not to take a hasty step. This is an important point in preparation for marriage. The pastor also should not be in a hurry, or be too easily influenced by undue pressures to bless the kind of marriages that most often fail. But if a mistake in discernment was made, and now after a miserable experience the parties concerned want to enter into more stable partnerships, there should be no difficulty in granting the declaration of nullity. Diocesan authorities who have had to intervene to grant a dispensation in the case of mixed marriage, are often reluctant to grant a declaration of nullity, or even agree to conduct the process for establishing it, lest the affair should reflect their own failure of judgement. This attitude is not commendable.

The third clause refers to actual cases of homosexuality, nymphomania etc., which render a person incapable of giving exclusive marital rights to a person of the other sex. One who suffers from such conditions will not normally be happy in marriage and will drag the partner into an unhappy relationship. But the resources of modern psychology should be used to the maximum extent to mitigate the condition to such an extent that the person will be able to enter into a tolerably successful marriage. Many writers use the expression '*psychic impotence*' to describe these cases. But there is the danger of confusing it with 'physical impotence due to psychic causes': Hence this is better classified under 'defects in consent', as in the draft of the new Code.

An attempt has been made in Holland to permit divorce in a circuitous way by bringing many cases under so called '*moral impotence*'. The marriage consent, it is supposed, has to be viewed not as a static but as a dynamic process by which a fulfilment of mutual love is gradually reached. The parties

concerned perceive the value of their marriage from the viewpoint of how far their union has proved to be a success or a failure. The decision, in this matter, belongs primarily to them. The ecclesiastical judges are there to help them to make 'a psychological examination' of the evolution of their marriage, and of their sincerity. The opinion of experts in psychology has to be sought regarding the capacity of the couple to form an interpersonal relationship that would permit them progressively to reach a happy union. Those found to be incapable of such a relationship can have their marriage annulled.¹⁵ In fact a large number of marriages were annulled on this basis. The Apostolic Signatura reacted strongly to this trend and besides issuing a stern reprimand, asked the Dutch bishops to remove from office the judges who would not conform to acceptable norms.

The reaction of the Signatura is understandable to the extent that a marriage may fail, not only on account of radical incapacity, from the beginning, to make a permanent commitment but because of the changeableness of the human mind and heart. But it should not be used to block all development in understanding the requirements of the marriage consent. It should still be possible to obtain annulment of a marriage entered into by young people without any real (*evaluative*) knowledge of what marriage means even though notional or superficial knowledge may be present. Further, though the capacity for perfect love cannot be made a requirement for valid consent, some minimum capacity for conjugal love and a commitment thereto is necessary. As a matter of fact, the draft of the new Code speaks of marriage consent as 'an act of the will by which man and woman bind themselves by covenant to a partnership (*consortium*) of conjugal life'. Among the factors that would render the consent invalid is listed the withholding of the 'right to communion of life'. This is distinguished from the traditional right to the 'marital act'.

The detailed working out of this condition in pastoral and legal practice is going to be a very difficult task. A delicate balance has to be struck between the rights of people to marry and the need of people who desire to be freed from a cramping

15. See *Clergy Monthly*, 37(1973)74.

bond; between the interest of individual persons and the stability of Christian marriage.

One of the frequent sources of trouble is the deception which some marriage partners experience. 'If I knew' is an oft repeated plea. As there is something necessarily unconditional in the marriage commitment which is expressed by saying 'I take you for better or worse', every disillusionment cannot be a reason for obtaining annulment. But provision should be made at least for cases of manifest fraud. So, the new Code has this Canon: "One who enters marriage deceived by a fraud perpetrated in order to secure consent and concerning a quality of the partner that is likely to gravely disturb the partnership of conjugal life, contracts invalidly." This is welcome as it will give redress to many who have been badly deceived. But it is hoped that it will be understood as applying not only to a positively false declaration, but also to the hiding of a fact or a defect which is likely to create grave discord e. g., sterility, infectious disease etc.

According to the traditional stand of the Church, which it is proposed to retain, "marriage enjoys the favour of the law". This means that a declaration of nullity, (and hence of a right to re-marry) can be obtained only when the previous bond can be proved to be *certainly* invalid. This requirement frequently gives rise to the rejection of pleas. It is meant to maintain the stability of marriage. But when there is total breakdown of a union, and hence no injustice would be done to anybody, it seems that it should not be urged too strictly. Some would argue that as the right to marry is a natural one when the validity of the previous marriage is doubtful the right to enter into a new union should be respected.

Many people suffer owing to the tardiness of ecclesiastical tribunals, largely attributable to cumbersome procedures. But since the publication of the New Norms for Expediting Marriage Cases, 1971¹⁶, there is less excuse for the prevalent interminable delays. The members of ecclesiastical tribunals must make a serious examination of conscience regarding their diligence in keeping up to

16. See *ibid.*, 35(1971)305 ff.

date on recent developments and in fulfilling their responsibilities on which the happiness of so many people depends. The provisions for having, when necessary, one-judge tribunals should be readily used. When even this is not possible, the episcopal conference should speedily set up regional tribunals with competent personnel who are free to devote themselves to this service.

Pastoral approach to divorced and remarried persons

Those who have attempted a civil or 'social' marriage while still bound by a previous bond are in an irregular situation though they might be subjectively in good faith and might not have been responsible for the marital breakdown. They are, however, not thereby 'excommunicated.' There is no law excommunicating them in spite of popular misconception in this regard. In the past, they were supposed to be 'living in sin'. It is not wise to use such expressions since God alone can judge the hearts of men.

The present law forbids ecclesiastical burial to those who die in this condition. But a number of episcopates and individual bishops have of late given new directions permitting it under certain conditions. So the S. Cong. for the Doctrine of the Faith has promised new regulations soon sanctioning Christian burial if the persons showed their attachment to the Church and gave some sign of repentance and provided there was no scandal. The S. Congregation pointed out that scandal could be averted by explaining that Christian burial is an appeal to the mercy of God and a sign of the faith of the community in the resurrection of the dead and life everlasting.¹⁷

Since such people are still members of the Church and are in particular need of help, pastors should show great solicitude towards them. They should be helped to discern the will of God in their regard and to live a Christian life as best as they can. The faithful should be enlightened enough to show them special love and concern. All this should be evident although there is still an attitude of condemnation in a self-righteous spirit. This is all the more deplorable when persons of good standing are exploiters of the poor.

17. *Documentation Catholique*, 70(1973)707.

The most difficult problem is about admission to the sacraments, especially that of the Eucharist. According to traditional practice, sacraments may be given only if the couple are ready to live in a 'brother-sister relationship' and if scandal is absent. When scandal is feared, they would have to abstain from receiving the sacraments in a place where their condition is known. This solution is admittedly difficult, if not impossible, in most cases. But it should not be dismissed out of hand since it brings out the tension in the situation and may be practical for some. One could for instance, read the remarkable witness of C. McCauley.¹⁸

The Holy See has again reiterated the traditional stand of the Church in this matter in a recent communication to the bishops.¹⁹ They are to see that the present discipline of the Church is exactly observed; they are also to see that the pastors apply the approved practice of the Church *in the internal forum*. This obviously refers to the 'brother-sister' arrangement. It is regrettable that many pastors are ignorant of this solution as is shown in the poignant story of McCauley who had to go from one priest to another for several years till she came upon one who was aware of it.

It is interesting that this document uses the expression 'internal forum'. It has been used for some time by writers in dealing with cases where a person is certain about the invalidity of the first marriage but cannot establish it in the external forum because of the absence of witnesses or because the diocesan tribunal is too tardy in arriving at a decision. Such a person has the objective right to marry but cannot prove it and hence there is a *conflict between the internal and external forums*. Meanwhile, if he has entered into another union, i. e., is living 'in a marital state of mind', even though the union is not explicitly sanctioned by the Church, one may ask whether the question of reception of the sacraments may not be favourably resolved 'in the internal forum', though due caution would have to be observed.²⁰ When

18. *Whom God Hath Joined*, New York, Sheed and Ward, 1961

19. See *Documentation Catholique*, 70(1973)707.

20. Cf., for instance, K. T. Kelly, "Moral Theology Forum", *Clergy Review*, 55(1970)137-141; L. Monden, *Sin, Liberty, Law*, London, Chapman, 1966, pp. 135-136; the Dutch Catechism (*A New Catechism*), London, Burns and Oates, 1967, pp. 375-76.

the problem arises because of the negligence of the tribunals, perhaps the extraordinary form of marriage (Can. 1098) may even be invoked to conclude that the second marriage is really valid.

But what about extending the favour of receiving the sacraments to other cases of invalid unions? While several episcopates and individual bishops have recently excluded this, there has been a spate of writings defending the readmission of the divorced and remarried to sacramental participation in the life of the Church. Among prestigious groups holding this view may be mentioned the French Association of Theologians for the Study of Morals. This would permit the sacraments when the first marriage has completely failed and the second is so stable that the Church would rather see the couple deprived of the sacraments than that it should be broken up.²¹ Some justify a lenient stand invoking a *conflict of obligations* – on the one hand to maintain their present union with its sexual dimension, and on the other, not to offend against the still-existing bond that was ratified by the Church.²² The Eucharist, it is pointed out, not only symbolizes the perfect unity of the Church but also gradually builds up this unity. While the Eucharist would be excluded for those who are in an anomalous situation under the first head, it would become meaningful under the second. Others rely on a theology of *imperfect response*. According to this view, the subjective response may fall short of the objective demands of the law. As J. McManus puts it: "If a couple sincerely believe that they can receive the sacraments, if they say that they are convinced that God does not demand their separation, and if they are showing signs of genuine Christian living, then only the immediate danger of serious scandal to the community should bar them from the sacraments."²³

21. See the report of the meeting held in Sept. 1970, "Le proleme pastoral des chretiens divorces et ramaries," *Vie Spirituelle: Supplement*, 109(1974)125-54.

22. See B. Meyers article summarized in G. Vass, "Divorce and Remarriage", 11(1970)272-275 and the remarks of Vass, *ibid.*, pp. 275-77.

23. J. McManus, "Moral Theology Forum: The invalidly Married and Admission to the Sacraments", *Clergy Review*, 55(1970)28.

Some would permit only a private reception of the sacraments or restrict it to places where the irregular nature of the union is not known. Others find that this clandestinity is not in accordance with the meaning of the sacraments.

Among those who defend the permissibility of receiving the sacraments some would assign the task of guiding the couples concerned to the spiritual adviser. Others would suggest the establishment of *official panels*. There are some who even propose that marriage tribunals be replaced by *advisory panels*. These would advise the persons concerned whether they may consider their previous marriage invalid and hence have a right to a second Church marriage or whether they may only receive the sacraments of the Eucharist and Reconciliation. This is called "*going beyond marriage tribunals*". The idea is to go entirely beyond legalism and solely seek the will of God in the life of the members of the Church. This proposal looks attractive. Perhaps it should first be tried out in some places on an experimental basis. If it helps better in achieving the goals of marriage tribunals viz., the rights of individuals within the context of the common good, the practice could be extended.

Coming back to the question of admission to the sacraments, this should not be absolutely ruled out for those who are in irregular unions but now are trying to do their best to live up to their Christian vocation in a difficult situation from which they cannot extricate themselves. However, access to the sacraments should in no way mean a weakening of the indissolubility of Christian marriage. It could be a middle position between the Church's blessing of a second union and an attitude of condemnation. Much of the difficulty now arises because of the scandal that readmission to the sacraments will cause among the faithful. There is need for a whole process of education in understanding the plight of unfortunate brothers and sisters without an inclination to weaken their own marriage commitment. The pastor will have to proceed cautiously since, otherwise, he may be responsible for causing greater harm even while sincerely trying to do good to some people in distress.

Conclusion

Indissolubility of marriage, which is so basic to the good of society, must by all means be fostered. Those who have entered into Christian marriage must realize their call to witness to the ineffable love of the Father for humanity, which He has shown in Christ.

However it does not help merely to insist on certain juridical norms. Youth must be prepared for a total commitment of self in marriage. Preparation for marriage must be conducted very seriously and effectively with all the resources that modern methods of religious education provide. Married people must be helped to grow in their union and handle the difficulties that naturally arise. They must understand indissolubility, not only as the legal permanence of their bond, but as a moral demand inherent in the marriage union. No one must be in a hurry to declare a marriage 'dead'. We must rely more on the power of grace and counselling techniques to restore a partnership which seems all but broken.

Remarriage, when the first union was really valid, does not seem to be a Christian solution to a marital breakdown. It leans too heavily on the side of individual good while the older harshness was too much weighted on the institutional side. The marriage covenant must be taken seriously. Hence, while we try to avert immature youth or others who are radically unfit from entering into unions that are bound to fail, all skill and diligence must be adopted to obtain annulments where they are necessary. This is not to be done in a spirit of legalism, but with a view to the good of persons and as a tribute to the sanctity of the marriage covenant which requires definite conditions to be valid. Provisions for obtaining 'dissolution' of marriages that are not sacramental and consummated should be used in the same spirit. People who have become involved in a 'second marriage' must meet with understanding from pastors and the Christian community. We can move towards their readmission to the sacraments when they are sincerely convinced that it is the concrete will of God that they remain together and when every precaution is taken to see that the measure does not create a disturbance in the Christian community and affect the indissolubility of Christian marriage.

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Marriage and Divorce in Hindu Society

The Hindus are apt to trace the origin of all their customs and practices to Vedic times. The Vedic family was patrilineal and patrilocal. The head of the family was the father, but the woman too played an important role in Vedic society. The wife ruled the female members of the household and the slaves. She had many well-defined duties in regard to the performance of household work. The Rigvedic times accorded so many privileges to women that their place in the family and in society was really an exalted one. Marriage was usually monogamous. A woman had the right to choose her own husband. She could, in the absence of her husband, act the priest and in case of necessity the soldier too.¹

In Hymn VIII, 31, where a couple is described as washing and pressing the soma juice, and plucking the sacred grass for sacrifices we get a glimpse of the wife of Rigvedic times: Here the couple lived in harmony, helping each other in their daily work: "gods, may the husband and wife, who with one mind offer oblations and purify them (the soma) and (propitiate you) with the soma even mixed with milk constantly associated, may they acquire appropriate (sacrificial) viands, may they be able to offer sacrifices."² The hymn embodying the nuptial ceremony as well as reference to woman's wifehood, indicates a home where the wife shares the burdens of her husband, not only in domestic life but also in religious ceremonies. A wife was, above all, required to provide the husband with a son.

The lot of a widow in Rigvedic times was not characterized by so many restrictions and austerities as in later days. Some passages in the Rigveda convey the idea that a widow was taken

1. Cfr. Indian Mind, By Fr. Berard O.F.M.Cap. "Women's place in Indian Tradition, p. 233, Mangalore, 1962.

2. Cfr. Rigveda, VIII, 31, 5 & 6.

charge of by the brother of the deceased, who could marry her with the permission of the elders. Immolation of the widow with her husband was not in practice, for the dead person was not cremated but buried, as the funeral ceremony describes³. Besides the widow is called away from the side of the dead before the burial takes place and hence she could not have been buried with her husband.⁴

From the time of the Atharva-Veda, of the Brahmanas and the Griha sutras the honourable position enjoyed by a woman of Rigvedic times was whittled down to a position of stark inferiority. Even the birth of a female child was depreciated. A woman no longer had the freedom of choosing a husband. Polygamy came to be prevalent. The Dharmasastras, especially the code of Manu, reduced a woman to abject subjection. Manu states that a woman, at all stages, should be subject to man, first to her father, then to her husband and in her old age to her son. She should never enjoy independence⁵. It is in this background that we should envisage the whole subject of marriage, re-marriage and divorce in Hindu society. Hindu society has been guided and ruled throughout the centuries by Vedic lore and the Dharmasastras and it is these that regulate marriage and re-marriage.

3. Cfr. R. V. X. 18.10,11,12 & 13 - "Earth rise up above him; press him not; yield to him (and) afford him comfort; cover him up, Earth, as a mother covers her child with the skirt of her garment". "May the earth heaped over him lie lightly; may thousands of particles (of dust) envelop him; may these mansions distill Ghee (for him); may they everyday be an asylum for him in this world... "I heap up the earth around thee, placing (upon thee) this clod of earth; may I not be injured; may the Pitris sustain this thy monument: may Yama make thee a dwelling here".

4. Cfr. *Women in the Vedic Age*, by Shakuntala Rao Shastri, Bharatiya Vidya Bhavan, Bombay, 1960, p. 25.

5. Cfr. Manu (Manava Dharma Shastra), V. 148: "Let her be in subjection to her father in her childhood, to her husband in her youth, to her sons when her husband is dead: let a woman never enjoy independence".

Marriage among Hindus

There are several variations in the marital institutions of the Hindus. Though the Brahminical ideals of marriage cannot be taken as valid for the entire Hindu society, yet for a general perspective they may be considered as the basis, while variants are considered side by side. Marriage is not merely a legal, contractual agreement among Hindus but a sacramental act. The various factors that conclude marriage build into it ties which are permanent and, at least psychologically unbreakable. As most girls are brought up to believe that marriage and motherhood are their destiny, a girl's knowledge that she will get married – and marriage presumably within a known set of relationships – may give a sense of security. This security is generally not known to girls in societies where choice is free, and the man has to propose to a girl, – in a sense where the girl has to arrange her own marriage. This can cause acute anguish and personality repression, among those who opt out of tradition, out of the Sita image.

According to Manu there are eight forms of marriage. The Brahma and Prajapatya marriages are more or less similar. The bridegroom is selected by the parents. He is a man of learning. The daughter, dressed in her finery, is offered by the parents and the bridegroom takes the vow to associate her closely with all his activities. In Daiva marriage, the bride is offered by the parents to the priest and the marriage is decided upon during the course of the sacrament. The Araha marriage is celebrated by the bride's father on an assurance from the bridegroom that he and the girl will live together in conformity with Dharma. The Gandharva marriage is based on mutual consent. The bridegroom selects the bride. Romance, outraged parents, absence of ceremonial solemnities characterize this type. In Asura marriages, the bridegroom purchases the bride for a price. In Rakshasa marriage, the bride is the price of war. The last kind Paishacha, is the most inferior. The bride is overpowered, made helpless through drugs or drink, and is unconscious, or thrown off her mental balance⁶. The first four forms are approved by the Shastras, and children born of such wedlock, it is said, will be great souls.

6. Cfr. Manu, *Op. cit.* III, 27 – 34.

The last four are prohibited and the children born of such wedlock were, it was believed cruel, and untruthful and would hate the Vedas and the sacred law⁷.

Marriage among Hindus, or, for that matter, Indian society as a whole, including Christians and Muslims, is not considered as primarily an affair of the boy and the girl who are getting married but an event which involves the entire kin groups of both spouses. In Rigvedic times the Samana festival was an occasion when unmarried girls could choose their partners in life. Later, however, the custom of parents arranging marriages through a mediator, a *didhisu*, came into vogue. In fact, it is important to remember that the idea of marriages based on romantic love is recent in human history. In India, in any case, it is still little known. The majority of marriages take place through the services of an intermediary, a type of the *didhisu* of olden days.

Marital institutions

The institution of marriage is a means by which alliances can be created or strengthened between groups such as families, clans, and royal houses. The simplest form of such alliances is where a woman is directly exchanged for another woman. Given the universality of the rules of prohibition applicable to incest within the nuclear family, it is essential for men to look for their wives outside it. The easiest way in which a man can secure a wife for himself is by giving his sister in marriage to another man and getting the other man's sister for his own wife. This sometimes becomes institutionalized in such a way that two groups continue to exchange their women over generations. The high caste Hindus do not approve of this custom as it goes against the Sanskritic ideal of the girl being given as a gift in marriage without anything being accepted in return.

On the other hand, among the lower castes, semi-Hinduized tribes as also in Himachal, the direct exchange is in vogue. Among these groups the sexual and marital norms relating to

7. Cfr. *ibid.* III. 41; Cfr. also *Manu Dharma Shāstra* by Kewal Motwani, Ganesh and Co., Madras 17, 1958, p. 113.

marriage are not so harsh as among the high caste Hindus. Women are allowed greater freedom of movement. The girl's parents do not give a huge dowry. Instead the groom has to pay a "bride-price" to the girl's parents. Similarly divorce is easier and widow-remarriage has always been permitted. These customs are fast changing since these groups are imbibing the life-style of the higher castes.

However, till recently, among the high castes the gift of a virgin daughter was considered as an act of religious merit the husband was regarded as a deity, divorce and remarriage were morally repugnant. To the accusation of the high castes against the "bride-price" of the lower castes, "you sell your daughters", the latter retort "we do not accept our wives in charity". The exchange marriage has its good points. It provides a built-in check against harassment by the girl's in-laws. If a man does not treat his wife well, he can expect his sister to be ill-treated in turn. This also ensures that the systematic status difference between the wife-giving and wife-receiving family typically found among the higher castes and which afterwards results in humiliating inferiority for the bride's kin, does not have scope for development.

The marital institutions of the high castes show that when a daughter is given, either political patronage or intangibles, like status and prestige is expected in return. This is true, above all, of the princely castes of Rajputs. The system of marriage among the princely groups is hypergamous: a girl of a lower section can marry a boy of a higher section but not vice-versa. It is interesting to look at the returns which the parents of the girl and boy expect from such a system. The girl's parents can use their alliance with a higher section to gain more prestige *vis-a-vis* people of their own section who cannot boast of such alliances. But the girl's parents must be prepared to bear the social costs of such an experiment. It seems that there are two factors which may induce the boy's parents to go in for such a match - one is the political support of the girl's group and the second is money, in the form of a huge dowry.

There are other implications also of the system. The highest group would be left with a surplus of girls as only a limited

number can be absorbed within the group if its men accept wives from the lower group. Thus the women will remain unmarried or the group will be forced to commit female infanticide. The problem of surplus males among the lowest groups is more easily resolved by their being allowed to marry outside the caste into tribal groups such as the Kolis of Gujarat. High rates of female suicide might also be associated with hypergamy, though not exclusively with it. Another consequence of hypergamy would be the shaky position of the woman coming from a lower group. She will be constantly reminded of her natal family and pressurized to extract more money from her already hard-pressed parents. Not until her own sons reached marriageable age would she be in a position to consider herself as belonging to her conjugal group. Suicide, in such cases, must seem an attractive way out of an intolerable position. The high rate of female suicide in regions like Saurashtra, where hypergamy is prevalent, and the fact that this is usually attributed to the oppression of in-laws is a conclusive proof.

The notions of purity and pollution are much stronger among the Brahmins than among Rajputs and Jats who are concerned more with ideas of honour and shame. Women are married within the same group of Brahmins. They play an important role in the protection of the ritual purity of the group. If men of ritually low status get access to them the purity of the whole group is threatened. So among these castes, the ritual status of the women can be considered as invariable. If they mated with men of higher status the children will have a higher status than their mothers. If they cohabit with men of equal ritual status the children will have the same ritual status as the parents. If men of lower ritual status mate with them their children will be of a lower status than the mother. Two institutional complexes result from the procedure described above.

The first relates to the practice of pre-puberty marriage, the worship of the husband as the deity and a complete ban on divorce and widow remarriage, with glorification of such cruel practices as *sati*. The woman must be protected from men of ritually undesirable status who might pollute them. This is achieved by marrying the girls to men of ritually correct status before they reach the child-bearing age and thus the problem of

their sexuality is transferred to their husbands. When pre-puberty marriages are not possible we find the practice of mock-marriages by which a girl is at least symbolically married to a ritually correct object. In this context one should mention the Nambudiri women, a majority of whom were not allowed to marry. In order to keep the priesthood exclusive and for ensuring that property was not divided between the brothers, the Nambudiris allowed only the eldest brother to marry. The younger brothers could not marry but they were allowed to have mistresses from the neighbouring Nair Castes who were matrilineal. The Nambudiris achieved their aim of protecting their women's sexuality not by pre-puberty marriages but by cutting them off from possible polluting contacts. They could not move out without observing strict purdah and covering their faces with palm-leaf umbrellas. So strict were the constraints on their freedom of movement that even in her own wedding ceremony a Nambudiri woman was replaced by a Nair girl in those parts of the ritual which necessitated her movement outside the woman's part of the house.

The second institutional complex relates to the custom of women of lower ritual status being allowed to marry, actually or symbolically, men of better ritual status. We have heard stories of gods coming down to earth to give seed to devout women in Hindu mythology. On an empirical level this idea is demonstrated in the institutions of temple prostitution, Kulin hypergamy and the Nambudiri - Nair relationship⁸. In the marriage ceremonies of several non-Brahmin castes, the bride is symbolically deflowered by a Brahmin. The Kulin Brahmins of Bengal were in such demand as grooms for non-Brahmin girls, that a Kulin Brahmin would be married to a number of girls spread over various villages. He had no obligation to his wife or children. Quite possibly a girl could never see her husband after the wedding night, but she was expected to keep the strict ritual of a widow after his death. On account of the great age difference between the Kulin Brahmin and his wives, many were left child-widows who had never lived with their husband. Social legis-

8. Cfr. Marriage among the Hindus, by Veena Das, in Indian Women, Edited by Devaki Jain, Published by Publication Division, Government of India, Jan. 1975, p. 79.

lation has removed the extreme hardships caused by Kulin hypergamy and such marriages have nearly disappeared.

Hypergamy existed also between Nambudiri men and Nair women. The Nairs are matrilineal and have what is known as 'visiting husbands'. The domestic unit among Nairs is composed of brothers, sisters and sister's children. A Nair woman can marry a man of her own caste or enter into sexual alliances with Nambudiri men. Younger brothers of Nambudiri families could not accept food from their Nair mistresses for fear of being polluted internally. But cohabitation was possible since it was only an external pollution, easily washed away by a bath. With stringent taboos on their women folk men had a free sexual life.

Other types of marital institutions

Among many groups in south India, marriage is prescribed or preferred between certain relatives. Among the Tamil Brahmins a girl is allowed to marry a younger brother of her mother, and among most South Indian castes the marriage of a boy with his mother's brother's daughter or father's sister's daughter is allowed. Marriage with any other type of relative is not allowed. Thus, while the mother's brother's daughter may be a possible spouse for a boy, he would not be allowed to marry his mother's sister's daughter. Indeed such a marriage would be considered incestuous.

Marriages in South Indian villages are endogamous. In fact the marriage networks are confined to a village or to villages close by so that the girl does not have to move with complete strangers. Some think that this system provided for better adjustment by the girl to her parents-in-law. Also the prospects of a marriage for a girl who was destitute or who was not good-looking were not entirely bleak. Her mother's brother or her father's sister would be under positive obligation to arrange her marriage with his/ her own son. Not only marriage between cousins, but also uncle-niece marriages are in vogue in South India. If a girl married into a known family circle adjusts herself easily, this same familiarity makes it difficult for a man to experience the same erotic excitement as he would with an

unfamiliar woman. It is not necessarily true that cousins would know each other before. Further, because the cross-cousins are regarded as potential spouses, their free intermingling, when they meet, is inhibited.

While in South India marriages are endogamous and cement existing relationships, in North India there is a ban on marriages between blood-relatives of any kind. Marriages therefore are exogamous. Cross-cousin and uncle-niece marriages would be deemed incestuous. Besides, marriages within the village are not allowed. That means that a girl after marriage goes not only to live with unfamiliar people, but also to a totally new place. In addition, visits from her relatives are not encouraged. Thus the bride leads a very isolated life in the first few years after marriage. One can imagine the trials of a new bride in a strange environment with no friends, her nostalgia for her father's house and the hostility she faces from her mother-in-law and sisters-in-law.

Though monogamy is the ideal form of marriage among the Hindus, plural marriages are not unknown. Even the scriptures and Dharmasastras allow a man to take more than one wife. The most important cause that occasions such a choice is the inability of the wife to bear a son. So strong is the predilection for a male heir who alone can perform, for his ancestors, the vital 'shraddha rituals' embedded in the Hindu ethos that it is not uncommon for women who have no children or who have only daughters to be driven away by their husbands. This happens even among tribal people like the Badagas of Nilgiris. Even otherwise, among some sections like the Paharis, a man can have more than one wife, with the proviso, however, that the later wives have a lower status than the first wife. This is indicated in the simple ceremony of the second marriage. In certain parts of Gujarat a second marriage can take place by the simple exchange of garlands between the bride and the bridegroom.

Among some South Indian groups, like the Nngudi, Vellalas and Pramalai Kallars a great deal of emphasis is placed on the first marriage which has always to be contracted with a woman

of the same caste. The secondary wives could be from lower castes. Their children were accommodated in the household but with a lower status. The children of the first wife had a pre-eminent place. In this matter of polygamy we find the system much more tolerant to the lapses of men than to women. Similar lapses on the part of women would be punished by nothing less than death or excommunication from the caste.

Leviratic marriages, mentioned in the Vedas and Brahmanas, are practised among some castes like the Jats of Haryana, and the Panjab. If a woman was widowed when she was comparatively young she would be married to her husband's younger brother. The custom was known as 'chadar dalna' - 'to cover with a sheet'. This, of course, assumes that a widow would exercise control over her husband's share of the property, which is rather unlikely. Obviously it meant that a widow was married to a man much younger than herself. This is not an absolute custom as is demonstrated by the fact that in the rehabilitation of war widows in the recent war with Pakistan, it was found that many of the widows belonging to Haryana and Panjab were being forced to stay with their parents-in-law until their husbands' younger brothers grew up to a marriageable age.

Polyandry, or the custom of a woman having more than one husband, though not very common, is found among some sections of the Hindus. Some regions in Himachal Pradesh have groups among whom fraternal polyandry is practised. Sometimes a woman, like the mythical Draupadi, may be married to a group of brothers or she may be married to only one man but his brothers may have sexual access to her. This practice is supposed to be conducive to keeping the property of the brothers undivided. Polyandry is practised by the Todas of the Nilgiri hills, the Lepchas of N.E. India, and the Khasas of Jaunsar Bewon in the foot-hills of the Himalayas⁹.

9. Cfr. Marriage in Tribal Society, In Sex and Marriage in India, by A. K. Sur, Allied Publishers, Bombay, 1973, p. 115 - 117.

Gotra, Sapinda and Jataka

Marriage in Hindu society is governed not merely by the rules of endogamy. Within the endogamous groups of the caste or sub-caste, marriage is not a matter of free choice, that is to say, one cannot marry a girl of one's choice. The caste or sub-caste itself is divided into various exogamous groups, and the eligible bride for a man must come from an exogamous group other than his own. These exogamous groups are distinguished from each other by gotras and pravaras. The term 'gotra' literally means 'a cattle enclosure', and 'pravara' means 'the great one'. Whatever the literal meanings may be, 'gotra' has become a patronymic family name, and 'pravara', 'the excellent one' of the family who introduced the gotra. When Baudhayana introduced the system in the north, there were only eight gotras. Today there are many. For instance, in North India, and particularly in West Bengal, there are as many as forty-one gotras among the Brahmins. In Southern India, on the other hand (and particularly in Tamilnadu), there are only twenty gotras among the Brahmins. Of the gotras only twelve are common to the North and the South.

Now it is not only the Brahmins who have gotras, but other castes too. It is said that other castes have merely adopted and followed the gotras of their respective Brahmin priests. Be that as it may the gotras have the most powerful influence on the marriage rules of the Hindus. No person can marry within the gotra; the bride must come from another gotra. To marry within the gotra is equivalent to incest. Thus though the caste system resulted in inbreeding within the caste group, it did not tolerate inbreeding within the gotra group. The same gotra rule also applies to the clan-like organization of some of the non-Brahmin castes of Southern India.

But the choice of a bride is limited not merely by the gotra rule. It is further limited in different parts of the country by 'gains', paryayas, sakhas, Vedas, and 'mata'. The main restrictive influence in this regard is exerted by the Sapinda rule. Sapinda implies consanguinity with reference to seven upward generations on the father's side and five on the mother's side inclusive of the ego's generation. Marriage within the Sapindas

has to be avoided. Sapindas are bilateral in types: gotraja Sapindas, that is those who belong to the same gotra or family as that of the ego, and bhinnagotra Sapindas, that is, those who belong to a different gotra or family from that of the ego. The gotraja Sapindas are relations on the father's side i. e., they bear the same gotra as that of the ego; and bhinnagotra Sapindas are relatives on the mother's side, i. e., they bear the gotra of the exogamous caste division from which the mother has come. It has been computed that this excludes no less than 2,121 possible relations. As a result the Sapinda rule has been relaxed and the number of generations reduced to four. It is said that Sapinda rules are observed only by the Northerners. People of Southern India where cross-cousin and uncle-niece marriages take place, do not fully observe it. Nowadays, marriages sometimes take place within the gotra, if the bride is not within the range of Sapindas.

Until recently marriage was not only universal but also compulsory in Hindu society. A marriage in Hindu society is arranged by the parents or elderly relatives. Sometimes the services of an intermediary are employed. In Vedic times he was called 'Sambhala', later on 'didhishu' and still later 'ghataka'. The ghatakas used to keep the genealogical history of every family so that these tables could be consulted to avoid infringement of the Sapinda rules. If the father or the elder relative approved of the family of the bride, then the horoscope or jataka was consulted. The Hindus, Karmavadins as they are, had a fatalistic philosophy of their own, and used to attach the greatest importance to the horoscope of the prospective bride. Hindu astrology embodies various aphorisms or rules relating to the marriage of boys and girls. For instance, if the age of the girl is an even number of years, marriage is avoided because it is believed that such a girl will become a widow in no time. A girl brings good luck if she is married on a Monday, Wednesday and Friday; if married on other days she becomes a kulata (adulteress). If married on a 'dark moon' day or on a day governed by Visthibhadra and rikta nakshatra (stars) she sends her husband quickly to the abode of death. If marriage takes place in the month of Ashadha, she is deprived of the enjoyment of worldly wealth. In this way a string of astrological inferences restrict the timing of the marriage. Furthermore, Hindu

astrology also demands that for a marriage to be happy, it should be contracted on a certain day of the week, or a certain month of the year, or when a certain star or planet is in a certain position.

If after scrutiny of the horoscope and almanac the bride is found suitable then the parties concerned proceed to see the bride and the bridegroom. Thereafter negotiations are carried on to settle the bride-price or the dowry (bridegroom price). Bride price is generally demanded by the lower castes of the Hindus. The higher castes demand 'pan' or the bridegroom price. The bride-price usually varies from Rs. 100 to Rs. 500 but the bridegroom price varies widely and has virtually no limit. The bride-price varies according to the age of the girl. The lower the age of the girl the lower is the bride-price. Again a virgin would fetch a higher price than a widow. The dowry among high caste Hindus depends on the educational qualification of the boy and the social standing of the family.

When the actual marriage takes place, according to the Vedic ritual certain ceremonies have to be carried out. The Grihasutras prescribe that the marriage should take place before the sacrificial fire and be accompanied by the following rituals:-

1) Circumambulation of fire and mounting on stone

The husband would lead the wife three times round the fire, chanting the following verse from the Atharva-Veda: "He am I, she art thou; he am I, the heaven I, the earth thou; the Saman I, the Rik thou. Come let us marry, let us beget offspring." At the end of each round the bride would mount a millstone, and the bride-groom would say: "Tread on this stone, like a stone be firm".

2) Lajahoma

This is a rite in which the brother of the bride, or somebody representing him, would pour into the cupped palms of the bride first clarified butter and over it fried grain. Three verses are chanted in course of this rite. The hair of the bride which up to this time remains fastened with two tufts of wool is now untied with the chanting of the following verse from the Rigveda:

“I release thee from the hand of Varuna”. This signifies her separation from the parental family.

3) Saptapadigamana

The bridegroom leads the bride seven paces in a north-easterly direction, chanting a verse which mentions the significance of each step.

4) Madhuparka or the argha ceremony

The bridegroom adorns the body of the bride with Madhuka flowers while chanting a verse from the Rigveda.

5) Panigrahana

In Baudhayana the Madhuparka ceremony is followed by the Panigrahana ceremony in which the bridegroom touching the heart of the maiden with his right hand says: “May thy heart, be my heart; may thy mind be my mind; may thou listen to my words with all thy heart, may thou follow me and my companions.”

6) The bridal bath

Before her departure for her husband's home, a rite takes place in which the bride bathes and then sits before the holy fire. The priest then offers oblations with prayers to all the gods.

7) Sitting on a bull's hide

On her reaching her husband's home she would sit with him on a bull's hide spread to the west of the holy fire and offer oblations.

8) Observance of abstinence

For three consecutive nights the couple observe austerities by sleeping on the floor and abstaining from intercourse. After that they consummate the marriage. Baudhayana, however, says that strict silence is to be observed on the first day until dusk when the husband after breaking silence would bring the bride out of the room into the open and show her the star Anuradha (Scorpionis) which is an emblem of steadfastness and fidelity, chanting at the same time a verse urging the wife to remain firm in life and steady in character like the star in heaven.

Where pre-puberty marriages were in vogue, postponement of sexual relations was a necessary corollary. A further ceremony was frequently performed either when the wife was taken to her husband's home or as a preliminary to the consummation of marriage. This bore various names: *gauna*, *garbhadhan*, *dviragauna*, *doli*, *rukshati*, etc. According to the practice of *gauna* the girl wife was not sent to the husband's family till some time after marriage and generally after puberty. This custom is still extant in North India where child marriage is still in practice, and the rituals known as several *gauna* ceremonies among the lower castes, especially *dhobis* and *chamars*, in U.P.

The *gauna* will probably disappear along with child marriage which has substantially decreased over the past 50 years or so. Thus in 1921 there were no less than 858,089 child husbands and 2,235,150 girl wives in the age group below 10; and 2,344,066 child husbands and 6,330,207 child wives in the age group between 10 and 15. In 1931 the child husbands and child wives in the age group below 10 were 2,312,999 and 5,002,386 respectively. The number of child husbands and child wives in the age group of 10-15 were 3,217,626 and 7,269,208 respectively. The situation has changed profoundly in recent years. In 1961, there was not a single child husband or child wife in the age group below 10. In the age group 10-14, however, there were 1,734,000 child husbands and 4,426,000 child wives. In the same age group there were also 19,000 widowed husbands, and 30,000 widows and 29,070 divorced or separated wives. Today, however, child marriage has come to be restricted. The Child Marriage Restraint Act of 1929 has put the minimum marriage age at 15 for girls and 18 for boys. Despite the Act, however, as the census figures show, the practice still continues.¹⁰

Remarriage and divorce in Hindu society

From the statistics given above it is evident that there are many child widows whose lot is most miserable. To the Hindu the relation of husband and wife is sacramental rather than contractual and once it has been established it cannot be severed even at

10. Cfr. Marriage in Hindu Society, in *Sex and Marriage* A. K. Sur, op. cit. p. 91 - 92.

death except by a desecration. Permission for Hindu widows to remarry was a natural corollary of the abandonment of 'sati', but though sati is gone, the ban on remarriage remained. It is reported that in every thousand Hindu women there are still 169 widows, 22 of whom were under thirty years of age and over a quarter of them under 20.

In the Rigvedic times, and even in the early centuries before the Christian era, widow remarriage was not prohibited. The Code of Manu definitely bans remarriage for widows, but expressly bids widowers to remarry. The basic reason for this enforced widowhood is the Hindu religious concept of marriage. Marriage is an affair that begins in this world and terminates in heaven. In heaven, according to the Hindu religion there is marriage among the gods and men. If a wife remains faithful to her husband she can expect to rejoin him in heaven. Another reason for this compulsory widowhood is the idea that a girl by marriage belongs to her husband's family and breaks all ties with that of her parents. Her closest relationship as expressed in pativrata, is with her husband who is in the other world. Thus a woman owes her loyalty to her husband, alive or dead¹¹. She can hope to be relieved from her widowhood only by rejoining him in heaven¹². Therefore it was considered preferable to bear with the sorrows of widowhood than to contract a second marriage.

Perhaps the most gruelling-experience is the treatment of the widow, which sometimes borders on the inhumane and this particularly is disconcerting, coming as it does, from the Sastras of a culture which laid so much stress on respecting and caring for the aged. A widow, according to Manu, should have no sexual relations with another man; she should emaciate her body by living an ascetic life; she should live, for the rest of her existence, a chaste and dedicated life: "A faithful wife who desires to dwell (after death) with her husband, must never do anything that might displease him who took her hand, whether he be alive or dead. At her pleasure let her emaciate her body by living on pure flowers, roots, and fruit; but she

11. Cfr. Manu, V. 156.

12. Cfr. *ibid.* V. 158, 161 & 162.

must never even mention the name of another man after her husband has died. Until death let her be patient (of hardships), self-controlled, and chaste and strive (to fulfil) that most excellent duty which (is prescribed) for wives who have one husband only"¹³.

A worse treatment meted out to a widow, especially among the Brahmins, is to render her completely unattractive sexually by such customs as shaving her head, and making her give up wearing jewels and fine clothes. This fact is not a thing of the past. Even now in Brahmin localities, one can meet Brahmin widows with shaven heads and unadorned with ear-rings, necklaces and bangles. A Hindu writer, in the Kannada monthly "Kasturi" recently described the fate of a widow as worse than that of a dog. The water touched by her is polluted; the food prepared by her is polluted and is not accepted by others. Her very shadow is dreaded by people who held her in esteem and love when her husband lived. "What is her sin?" he asks. Is it because she has lost her husband? Has she been the cause of his death? She is kept out of social functions! Now that she is a widow, for no fault of hers, she cannot take part in feasts and marriages. She is debarred from social gatherings where, formerly, she took a prominent part! Why this cruel ostracism?¹⁴

Rami Chhabra in a study of the traditional Indian widow has done a service to Indian society by graphically describing the inhuman plight of Hindu widows in Mathura, U. P. Widows from all over the the country come to Mathura and Brindavan to lay their lives at the feet of Lord Krishna. These 'dasis' of the Lord are, in a way, outcastes of a society that prides itself on women's social status. Nearly 7000 widows live a life of loneliness and abject poverty in the city of temples. There are tens of thousands more in similar circumstances all over India. Some of them, like Suchitra Dasi, 69, who became a widow when she was nine years old, are waiting for the day of deliverance. Some state governments make a show of their concern for the

13. Cfr. *ibid.* V. 158-160; also *Widowhood*, by Motwani, *Dharma Shastra*, p. 117.

14. Cfr. "Anukampaniya Prani", in *Kasturi*, Hubli, Karnataka, May 1975, p. 89-92.

poor widows. On paper, the U. P. Government offers a pension of Rs. 30/- a month to over-aged and destitute woman. Owing to red tape hardly a handful have been able to avail themselves of this scheme. The Tamil Nadu Government offers cash certificates and sewing machines to widows who want to remarry! Who will help them to remarry? Rami Chhabra asks this question and ventures a solution. What is the solution? "They need a Mother Teresa to come and work for them". But there is only one Mother Teresa in the country. Has the Hindu religion no ministering angel? And society no responsibility to own?¹⁵

Such being the deplorable lot of Hindu widows (to a lesser extent of widows among Christian and other religions in India, whose lot is only slightly better), is there any chance of remarriage? Manu is quite adamant in denying remarriage to widows. However, should a childless widow desire to have a child she should be allowed to beget one from a relative of her husband by special permission. A brother-in-law or another relative of her dead husband should be selected to approach her. He should come clean, remain silent, give her only one child. One child is enough, according to law, though some sages are prepared to allow two. But when the purpose of the meeting such as this is over, these two should behave towards each other as a father and daughter-in-law. If they deviate from this rule and act under the impulse of carnal desire, they should both be considered dishonourable like those who defile the bed of a daughter-in-law or of a teacher¹⁶.

The Hindu Sabha advocates remarriage, but with a certain complacent patronage puts it forward as being specially appropriate for the lower castes on the ground that they are dying out owing to their failure to find unmarried girls as brides. There is little justification for this assumption. There are instances of widow remarriage but they have been viewed with displeasure by some sections of the caste. However, organizations have sprung up for the encouragement of widow remarriage and it has become more prevalent during the last thirty or forty

15. Cfr. The Tragedy of the Traditional Indian Widow, Indian Express, May 11, 1975, p. 12.

16. Cfr. Manu, IX, 159 - 163.

years. Nearly all are in favour of restricting the remarriage of widows to those who have been bereaved before the marriage was consummated or to those who were of tender years.

A Hindu widow cannot, however, be married according to the ordinary religious rites. This kind of marriage has different names. The ordinary term for regular marriage in Northern India is "vivaha", while widow remarriage is called "sagai", "kharas", "karewa" or "sanga". As a matter of fact widow remarriage is common among the Hindus of the lower castes. But when such castes want to move up in the social hierarchy, they forbid remarriage of widows. On the other hand widow remarriage is permitted among Muslims, Christians and Parsis.

Mention has been made of levirate marriages. The widow of the deceased elder brother is taken to wife by the younger brother. This is another form of remarriage. The castes that allow the levirate are ordinarily not the higher ones. Thus in Orissa junior levirate marriages occur among all the poorer classes, and though the Brahmins, Karans and Khandayats do not allow the practice a detailed study of kinship usages and literature reveals the existence of it, in former times, among the higher castes. It is also met with among many of the castes of northern India. There a widow simply goes to live with her younger sister-in-law as a co-wife. The custom of levirate is also found among many of the lower caste people of Gujarat and Kathiawad, and among the Kunbi castes of Maharashtra, the Ahirs of Haryana, the Jats and Gujars and several other castes in Uttar Pradesh, the Kodagas of Mysore and among some Muslims.

It is said that in Garhwal there are two practices of the levirate nature. In the first the widow, even though not childless, continues to live in her deceased husband's house and her brother-in-law goes and visits her with her consent. The second form is the common practice of taking to wife the widow of a deceased brother. The widow, in this case, leaves her own house and comes to the house of the brother-in-law as his permanent wife. The children of such a union are considered legitimate. This custom is confined to the inferior sub-castes of the Brahmins,

Rajputs and Khasas. Among the Khasas a man goes to live with a widow whom he marries.

If remarriage was not easy for the Hindu widow, divorce was much more difficult. Manu, as a master law-maker, has his own say on divorce. After considering marriage as a highly ethical institution, he states, at length, the grounds on which a legal dissolution is allowed: "A husband should live with his wife for one year even if she hates him. After that they must part. She who disrespects her husband, is passionate, drinks, is of bad conduct, rebellious, diseased, mischievous, should be superseded by another wife. On the other hand, a woman should not be compelled to live with a mad husband, a mentally defective man, a eunuch, one destitute of manly strength or one afflicted with diseases. She should be allowed to separate from such a husband after receiving her share of property"¹⁷.

Further, a husband should live with a barren wife or with one whose children die, for ten or eleven years, but must separate from a quarrelsome wife immediately. A sick wife, kind to her husband and virtuous in conduct, may separate if she desires. She should never be disgraced¹⁸. Manu here speaks of separation but not of divorce in the modern sense of the word. For before the Hindu Marriage Act of 1955 came into force, the husband who wished to marry another wife could do so easily, but the bond of marriage, which in the Hindu religion is a religious sacrament, could not be broken. Although a woman convicted of adultery may be deprived of her status as wife and turned out of the caste, divorce in the current sense was impossible.

The case is different among certain low castes in northern India, and many castes, both high and low, in the South, especially where the Sambandham form of marriage (between Nair women and Nambudiri men) is in vogue. Among many of the castes of U. P. divorce is practised. It is called 'Chutt'. A husband can at any time divorce his wife either verbally or in writing provided the next man who takes her to wife pays double

17. Cfr. Manu Dharma Shastra, by Motwani, op. cit p. 118.

18. Cfr. Manu, IX. 81 - 82.

the 'jeodhan' (bride-price). Divorce is also prevalent among the Doms of Tehri-Garhwal. It takes place by mutual consent of husband and wife. Divorces without serious reasons are, however, becoming less common.

In some parts around Dehra Dun the bridegroom has to pay a small sum to the bride's father as jeodhan (ceremonial gift), which is meant to cover the expenses of the marriage. Among the Kuruvas a woman who has seven successive husbands, whether she lost them by death or divorce, is much esteemed and takes the lead in marriages and religious ceremonies. In Madhya Pradesh many castes freely allow divorce. If a woman goes off with another man, the husband is usually satisfied with the repayment of his marriage expenses, and the panchayat, after being feasted, sanctions the divorce and the new union. In a caste of high status like the Jadams of Hoshangabad, an endogamous branch of the Rajputs, it is said that a woman has sometimes as many as nine or ten husbands in the course of her life. Divorce is also prevalent among the lower castes of Bihar. Among the low agricultural and labouring castes, the impure castes and tribes, marriage ties are easily dissoluble.

Legislation on remarriage and divorce

The relentless efforts of Raja Ram Mohan Roy induced the British Government to abolish the cruel custom of *sati*, by the promulgation of the Bengal Sati Regulation XVII of 1829. Once the Hindu widow was rescued from the fire of the funeral pyre of the husband, the next move was to remove all legal hurdles to her remarriage. Pandit Iswarachandra Vidyasagar's efforts resulted in the enactment of the Hindu Widows' Remarriage Act of 1856. The Act declared that no marriage of a woman whose husband was dead at the time of her second marriage was invalid and no children of such marriage illegitimate. A major legislation enacted for abolition of child marriage was the Child Marriage Restraint Act XIX of 1929. It restrains marriage of children, but does not declare the marriage itself void. It prohibits solemnization of a marriage where the male is under 18 years of age and the female under 15 years.

The Hindu Marriage Disabilities Removal Act XXVIII of 1946 rendered validation of marriage between parties belonging to the same gotra or pravara or to different subdivisions of the same caste. Thus the caste barriers to marriage were also removed. The Hindu Marriage Validating Act of 1949 went on further to validate all marriages whenever performed, that is before or after the Act, between parties belonging to different religions, castes, sub-castes, or sects. It extends to the whole of India and to all Hindus, including Sikhs and Jains. Similarly legislation sought to render valid marriages of the Nairs, the Nambudiris, the Marumakkatayams, the Marumakkathayis, the Thiyas etc. as these obtain according to customs and usages in the South.

In the forties also came some legislation for prevention of polygamy. The Bombay Prevention of Hindu Bigamous Marriage Act XXV of 1946, rendered void the bigamous marriage of a Hindu, which term also includes Sikhs, Jains, Buddhists, Arya and Brahma Samajists, and converts to Hinduism. A bigamous marriage according to this Act is "marriage of a person during the life time of a spouse with whom a valid marriage is subsisting on the date of such marriage." Similar legislation was introduced in Madras in 1949 and in Saurashtra in 1950.

At the same time legislation was framed for separation and dissolution of marriage of a Hindu married woman. By the Hindu married women's right to separate Residence and Maintenance Act XIX of 1946, it was declared that a Hindu married woman shall be entitled to separate residence and maintenance on one or more of the following grounds (subject to her being chaste and remaining a Hindu, and provided that she has not failed to comply with a decree for the restitution of conjugal rights): (1) if the husband is suffering from any loathsome disease not contracted from her; (2) if he is guilty of such cruelty as renders it unsafe for her to live with him; (3) if he is guilty of desertion; (abandoning her without her consent or against her wish); (4) if he marries again; (5) if he ceases to be a Hindu by conversion to another religion; (6) if he keeps a concubine in the house or habitually resides with one; (7) for any other justifiable cause.

Besides the Madras Marumakkathayam and Aliyasanthana Acts, and the Cochin and Travancore Marumakkathayam Acts

which provide for the dissolution of a marriage, there are the the Bombay and Madras Divorce Acts of the 1940's. The Bombay Hindu Divorce Act XXII of 1947 and the Madras Hindu Bigamy Prevention and Divorce Act VI of 1949 set down various grounds for the dissolution of marriage and to make divorce possible.

But the most important legislation on marriage is the Hindu Marriage Act XXV of 1955 enacted by the Indian Parliament. It sets down various conditions for a valid marriage between any two Hindus. Under this Act a marriage contracted while a former spouse is living or a marriage within the prohibited degrees of relationship or between sapindas is void and may be declared so by a Court. A marriage whether solemnized before or after the commencement of the Act is voidable and may be annulled by a court on any one or more of the following grounds: 1) if the respondent was impotent at the time of the marriage and continued to be so until the institution of the proceeding; 2) if a party to the marriage was an idiot or lunatic at the time of marriage; 3) where the consent of the petitioner or of the guardian was obtained by force or fraud; 4) if the respondent was pregnant by some person other than the petitioner at the time of marriage provided that the petitioner did not know the facts alleged at the time of marriage and that the petitioner had no marital intercourse voluntarily after the discovery of the ground entitling him to a decree of nullity¹⁹.

By way of conclusion we may say that the Indian woman today is much more free than her counterparts were fifty years ago. At least legally, and on paper, she seems to be completely liberated from the many disabilities she suffered before. It was only the heterodox religions, Buddhism and Jainism and the Bhakti movements that paved the way to the liberation of women but above all the National movements. In addition, free and independent India has passed a series of legislative measures which have broken the shackles which bound women by liberating them from their educational backwardness, family restrictions, and total domination by men, and by giving them employment opportunities outside the family, civic rights and political positions, and freedom from caste and religious restrictions with regard to marriage and in short equality with men in every sphere of life firmly guaranteed in the Indian Constitution.

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19. Cfr. Law, Marriage, and Democracy, by A. K. Sur op. cit. p. 152-159.

Indissolubility of Marriage and Pastoral Compromise

There is no doubt that marriage is indissoluble. The indissolubility of marriages derives from the nature of true love. The very possibility of divorce and remarriage is contrary to the concept of genuine love. All protestations of love without the unconditional will to fidelity are nothing but lies. Love subject to recall, and fidelity subject to repeal, are contradictory.

Yet man finds himself in a fallen state. So we have to reckon with some sad facts in the lives of certain married people. Sad instances of people contracting a second marriage, when their previous partner is still alive, are not so rare. Many people who find themselves in this situation suffer terribly because they are cut off from the mainstream of the life of the Church. What can we do for them?

Strict adherence to the respected principles of moral theology can render us callous to the sufferings of our brethren who are involved in invalid marriages. Is it an honour for us to be extremely rigorous towards those who enter upon second marriages after divorce, when no such rigour is shown to others who are unfaithful to important Christian principles? Do we exclude from the sacraments segregationists or unethical businessmen or crooked politicians or even distributors of obscene literature, as we do those who are divorced and remarried?

Today when the Church is trying to be more alive to the existential problems of persons, there is a greater need of openly discussing the possibility of helping the unfortunate victims of invalid marriages. Theological and legal impediments to the modification of the existing official practice regarding the indissolubility of marriage should not stand in the way of a pastoral solution to the vital and painful problem we are considering here. We prescind here from doctrinal questions and devote ourselves merely to pastoral practice. The indissolubility of Christian marriage can be preserved even while legal procedures are adapted

to the needs of our brethren. The indissolubility of consummated sacramental marriage is deeply rooted in the tradition of the Church, but not the prevailing rigorous attitude towards all invalidly married Catholics.

As a pastoral solution there could be an official acceptance of 'second marriage' Catholics whose first marriage is for all practical purposes dead; who are unable to make use of the existing legal machinery to rectify their marriages and who have shown their sincerity and good will by the stability and the spirituality of their second marriage. It would be an effective sign of peace and reconciliation in the Church if this pastoral solution could be worked out, which harmonizes the rights of the persons of good will with the obligation of the Church to defend the stability of marriage. Such a solution would be advisable for various reasons, some of which are now discussed.

I. No help from the existing law

Many mistakes in marriage are committed out of ignorance, fear and human weakness. Therefore we should be sympathetic towards those who have experienced a break-up in marriage and have taken to a second marriage. Understandably, many persons after a broken marriage find it practically impossible to live alone. If they try to do so they often find themselves exposed to sexual offences. Considering the weakness of the faith of many persons, the defect of their upbringing and the lack of experience, the alternatives before them are not a life of virtue and of sin but of a greater and lesser evil, namely, the psychological and moral disintegration brought about by separation and continuance in the second marriage. Some couples are unable to rise to the heroism of living like brother and sister with a second partner.

The present law provides for only four situations when a Catholic may remarry. They are the termination of first marriage through the death of the spouse, annulment of the first marriage, and the Pauline and Petrine privilege. Evidently these provisions do not cover most of the second-marriage Catholics. We do not have an officially approved way by which we can help them to live in full communion with the Church.

II. Pastoral rather than doctrinal compromise

We are dealing here with only pastoral compromise; not with doctrinal. Doctrinal compromise would mean a betrayal of Christian principles; pastoral compromise, on the other hand, means a compassionate application of the law. Pastoral compromise truly desires to reach what is prudently possible at the moment. It seeks to discover the best way of fulfilling God's will in a concrete situation. It consists in the art of finding what is truly possible at a particular time.

It makes a distinction between objective moral norms and their practical application. Moral norms seek to point out the limits beyond which we cannot go without objectively endangering moral values. Pastoral prudence deals with the next possible step in the direction of an ever greater realization of Christian values, and is not preoccupied with putting objective norms invariably before individuals. It is aware of the concern of the Lord: "There is still much that I could say to you, but the burden would be too great for you now."¹

Bernard Häring gives the following example of a pastoral compromise. The objective moral attitude to marriage after divorce is, in our tradition, clearly negative. Those who act against this norm never get doctrinal approval; in other words, a second marriage during the life-time of the first spouse is incompatible with an objective norm. But pastoral prudence may in some difficult situations look on the second marriage as the lesser evil. It will not generally speak out on the concrete obligation to separate unless this can be really hoped for and looked for as a step forward for the persons concerned and the community. It considers the psychological and moral balance of the two spouses and the need of the children for the warmth of a home, and is content with the advice "Do what you can and pray for what you cannot yet do." The parties may have given evidence of good will, growth in humility, penance and self-control, and this can be recognized as their beginning already to fulfil the will of God.²

1. *Jn* 16: 15.

2. B. Häring, "Dynamism and Continuity in a Personalistic Approach to Natural Law," in: *Norm and Context in Christian Ethics*, ed., Outka and Ramsey, New York, 1968, pp. 216-218.

In arriving at a pastoral solution, a certain writer asks us to keep the following points in mind³. We should consider the Gospel imperative that every Christian is called into honest discipleship with the Lord⁴. Sacrifice, then, is always a real possibility in the life of the Christian disciple. The pastor, then, must positively confront his people and challenge their standards. He must elicit their very best selves from them. He must not simply embrace and approve the secular solution. He should, first of all, help the second-marriage Catholic to see the truth of his situation. An over-enthusiastic, over-compassionate response denies a person the possibility of facing the real issue. Pastoral love is not the saving of others from all suffering but the willingness to continue to love them in their suffering.

The pastor needs to be a person sensitive to the real experience of the other. Thomas Aquinas clearly pointed out that all our ideas about God stem from our experience of the things of this world and of salvation history⁵. Man himself, along with the concrete world in which he lives, is the locus of truth. If God speaks, it is through mankind. Only the reality of man, the world and history can convey the voice of God's revelation. This is why there is no contradiction between the word of God that reaches us through the statements of Scripture and that which comes to us by way of our present existential experiences. Scripture gives the norm, showing us how we can distinguish God's word faithfully in the demands of our present existence.

A pastoral solution goes beyond the boundaries of the legal in order to foster sound pastoral advance and productivity. When it is possible, such a solution should funnel a probable case into the marriage tribunal. Otherwise the case is taken to the "tribunal of mercy" and thus relies on the total gratuity of the grace of the Lord. This approach depends on God's presence as perceived by a discerning pastor in his charism of reader of the signs of God's presence in His creation.

3. Gerald Coleman, "Pastoral Theology and Divorce," *The American Ecclesiastical Review*, 169 (1975) pp. 263-267.

4. *Jn* 15: 14-15.

5. *ST* I, q. 8, a. 7, ad 1.

Epikēia is a virtue well respected in Catholic thinking. Pastors should restore its use in this regard. It allows the law to be set aside in the interests of equity. It is a virtue which seeks what is reasonable in a given situation.

III. The Mind of Christ

When Christ met the Samaritan woman at the well at Sichar⁶ He knew full well that she was living in an irregular marriage. Yet He spoke to her of the living water He had for her. It is remarkable that Jesus who rebuked the Pharisees for their hypocrisy and blamed the Apostles for their lack of faith, did not excommunicate this woman for her irregular marriage. He chose this "invalidly" married woman to announce the news of His arrival. He complimented her for telling the truth about her marriage and addressed her with the respectful title, "Woman".

The Jewish law prescribed that an adulteress not only deserved disrespect but was to be stoned to death. For our Lord, however, there seemed to be no direct connection between her irregular marriage situation and her acceptance of the Father as God. Legal rejection was not the way in which Christ dealt with the woman at the well. Would it be too much for us Christians to be imbued with this attitude of Christ towards the invalidly married?

We firmly believe that laws safeguard human rights and uphold the dignity of man. Are we sure that if Christ were to appear today, He would not direct the same blazing reproach at us, the custodians of the law, as He did at the Pharisees and even to His own Apostles? Can we be sure that we are not overlooking some important Christian values in our concern to apply the law? Is it not possible that we are at times upholding the law at the expense of the beaten sinner whom Christ came to save?

IV. Contemporary opinions

According to several theologians and canonists it is not necessary that there should always be a strict relationship between an official ecclesiastical declaration of the nullity of the marriage of a

6. Jn 4: 5-18.

person and his or her right to receive the sacraments. The January 1970 issue of *The Jurist* is almost wholly devoted to this question and all the contributors without exception maintain that a repentant second-marriage Catholic could receive the Eucharist even if there was no prior ecclesiastical declaration of nullity or dissolution of the previous marriage.

The number of pastors who put into practice the 'internal forum solution' is increasing day by day. This solution states that Catholics involved in second marriages are allowed to receive Holy Communion if, after careful consideration, prayer and advice, they come to the conclusion that their first marriage is invalid or that they cannot breakup from the second marriage without serious harm to themselves and to their family.

It is noteworthy that even some Bishops have officially sanctioned this internal forum solution. In late June, 1972, Bishop Robert Tracy of Baton Rouge, Louisiana announced in a pastoral letter certain procedures for admitting to the sacraments divorced and remarried catholics. He wrote among other things: 'Certainly all of us have relatives or friends who although they refrained from receiving the sacraments of the Church due to their entry into a second marriage after divorce, have nevertheless remained faithful to the practice of their religion as far as was possible to them in the present situation. We know of the suffering of these people. We know of their repentance in many cases for whatever wrong there may have been on their part for the failure of their first marriage and for whatever they may have contributed by their actions in this regard to the deterioration of the proper concept of marriage and family life within the community of God's people.

"For many of these people, there is no possibility either morally or physically returning to the former union and relinquishing the grave responsibilities they have contracted as a result of their subsequent marriage. The Church has a pastoral responsibility of healing and forgiveness, following the example of Christ, without giving the impression that she condones divorce and remarriage or that she has given up any of her firm beliefs in the sanctity and life-long character of the marriage vows and married life.

"Such an approach is now possible to us as a result of the development of a new pastoral approach for giving consolation and the possibility of return to the Sacraments for those who are in the position of the persons mentioned above....

"What a good conscience decision is not: 1) Not a validation of a second marriage. 2) Not a permission to remarry if previously married. 3) Not an opening or permission for any kind of public ceremony, blessing or renewal of vows. 4) Not a judicial procedure but simply an administrative one in accord with recognized norms. 5) Not available in the Diocese of Baton Rouge except for subjects of this diocese. 6) Not meant to provide a bypass from external forum solutions where such are possible.

"What a good conscience decision is: 1) Is a recognition by the Church in an official way of the right of a party involved in a second marriage, by reason of his good conscience in the matter, to receive the Sacraments with no official decision being rendered one way or the other as to the validity or invalidity of a previous marriage or marriages.... 2) Is available in the Diocese of Baton Rouge only for subjects of this diocese and only for residents of a particular parish when requested by the pastor of that parish. Once the Decree of Good Conscience is issued, of course, the party (ies) concerned may receive the sacraments in any parish in any diocese. 3) Is available only to those whose good conscience is evident in the continued practice of their faith insofar as this was possible and they were able. 4) Is available only to those who have proven the stability of their present marriage by its having lasted at least three years. 5) Is an internal forum solution rendered to a person involved in a second marriage in situations:" e.g. when a Catholic sincerely believes his first marriage was not, but his present one is true⁷.

The committee set up by the Catholic Theological Society of America to study the problem of second marriages made the following statement with regard to second marriages and participation in the life of the Church: "A second problem concerns the reception of the sacraments and participation in the life of

7. Cf. *Catholic Mind*. November 1972, pp. 5-7.

the Church by those who have already entered second marriages. At the present time because of a long-standing theological position, these people are judged unworthy of receiving the sacraments, especially sacramental absolution and the Eucharist, and are frequently subjected to certain social sanctions. This has been true where the second marriage is obviously stable and the couple are living up to all their other religious obligations. The Church, while acknowledging that it may be wrong in many cases for these couples to separate because of obligations to the children and even to each other, has nevertheless continued to refuse them the sacraments unless they would agree to live as brother and sister. Since the willingness to accept such an arrangement and the possibility of living up to it have been understandably rare, most of those presently living in invalid marriages have been deprived of integral participation in the life of the Christian community."

"It is the judgment of this committee that whatever may have been its theological justification or benefits in the past, there is serious reasons to modify this practice...."⁸.

V. Living in sin?

According to most of the manuals of moral theology invalidly married Catholics are to be excluded from the sacraments because they are supposed to be publicly unworthy, living as they are in "sin". If they wish to receive the sacraments they should repent. The signs of repentance are total separation or, where that is not possible, a life of complete continence. If these signs are not forthcoming the couple are presumed to be not cooperating with the grace of true conversion. The assumption here is that a true conversion would naturally lead to either complete separation or a life of complete continence.

This assumption is being questioned today on various grounds. First of all, there are cases in which total separation would be morally wrong. The father of a family of five, for instance, could not walk out of his family for ever just because the mother of his children is not his lawful wife. He has a serious obligation to create an atmosphere of love, peace and tranquillity

8. Cf. *America*, October 7, 1972, pp. 259-260.

in the family so that his children may grow up in a wholesome manner.

Secondly, we agree with Bernard Häring when he writes that although the Church's principle remains firm, that divorced persons whose first marriage was valid in the sight of God and their conscience have no right to remarry, and that a serious living together or a civil marriage is no true marriage, it would be inaccurate and unjust to characterize all such unions simply as concubinage, for the meaning of the word 'concubinage' precludes the intention to marry, to engage in an indissoluble union. This intention can very well be subjectively present in many divorced persons who remarry although its implementation is prevented in the objective sense⁹. We are here thinking of those remarried spouses who have the intention of being faithful to each other and to their children for ever and who otherwise live a good Christian life. In other words, all the factors that go to make a good Christian marriage are present except that of canonical validity. Hence we exclude from our present consideration all Don Juans and Promiscuas and persons who live in a temporary liaison, though some elements of love may be present.

Are not those whose case is being considered living in fornication or adultery? The standard manuals of moral theology will admit that fornication is much more than sexual intercourse between two unmarried persons. As these same manuals attest, the main reason why fornication is sinful is that it causes grave injury to the welfare of the child and of society, even if for some extraneous reasons such injuries may not result. Granting that the real meaning of sexuality is best realized in marriage and granting further that casual and promiscuous sexual relations destroy social well-being, it may be asked whether every canonically invalid marriage does serious social harm. Evidently not some of the marriages in question result in a deep and enduring union and give rise to a good home.

Thirdly, at least some of the second-marriage Catholics do not seem to live in sin in the existential sense. A case given by

9. B. Häring, *Marriage in the Modern World*, Westminster, 1966, p. 301.

Viktor Steininger in his enlightening book *Divorce* is pertinent here¹⁰. Suppose marriage takes place only in form, in the Church, mainly by chance, since both partners, who are baptized Catholics, appear to have no very close or conscious contact with the Church. It soon becomes evident that this marriage, humanly speaking, is bound to break down. In fact, a civil divorce is obtained. After some time, one spouse finds a new partner and marries civilly, without being troubled by religious scruples. From a human standpoint this marriage, invalid in canon law, goes splendidly. The couple appear to love one another and the children, are ready to help their neighbours, enjoy the greatest popularity and esteem in their community, educate their children very successfully, are always cheerful, contented and unassuming. They exercise a really beneficial influence on their surroundings.

This is strange. If the norms of the Code and of the manuals are generally correct, the couple are living in a state of grave sin. People who live in this state might be expected to make a negative impression on their neighbours. It is quite inconceivable that people who live in a state of serious sin should at the same time impress their fellowmen in an exemplary, loving, humanly open and winning fashion. Everything seems to be in order in the present marriage, for by this time these partners are realizing a genuine love. There is no doubt that the grace of Jesus is operative in this couple. Then how can we generalize that all invalidly married couples are living in sin?

In the fourth place, there is the possibility of conflict between the internal and the external forums. This possibility is founded on the fact that the external forum does not give adequate expression to the mystery of Christian marriage. Hence it can happen that a strict following of the law obstructs rather than promotes the values and ideals of marriage.

There can be no question about the indissolubility of marriage, but there must first be the reality of marriage before it can be indissoluble. In some instances, at least, a marriage fails because it has never been a real marriage at all. In order to illustrate the possibility of conflict between the internal and

10. V. Steininger, *Divorce*, London, 1969, pp. 147-153.

the external forums in the area of marriage we shall borrow an example from Fr. John Catoir, the presiding Judge of the marriage Tribunal of the Diocese of Paterson¹¹.

The catholic Church holds that since marriage is a public act it enjoys the favour of the law. Therefore a marriage, by legal presumption, is always considered valid unless someone can prove it to be invalid. A girl was abandoned by her husband within a year or so of their marriage. He left telling her that he only married her to give the baby a name, and that he never intended to stay with her permanently. She would have solid grounds for an ecclesiastical annulment case. It would then be her burden to prove these facts in ecclesiastical court. She would have to present two or more witnesses to establish conclusively that her husband lied to the priest before marriage when he was asked whether he intended permanent union. The burden of proving that he lied at the time of the marriage falls on her.

Because this is very difficult, only a small percentage of the petitions presented to the Church courts have any hope of arriving at a completely successful decision. So where does this girl stand? Her husband has deceived her, but she is not able to produce the necessary evidence to convince the Church officials of the invalidity of her marriage. She can find no witnesses; she can offer no legal proof. Once it becomes clear that she cannot prove her allegation, the Church officials are satisfied that they have done all they can. The girl finds herself stranded at a very young age with the frightening alternatives of living alone for the rest of her life, or of marrying again outside of the Church. She wants neither.

If a man marries with the hidden intention of staying with his wife for only a little while and then leaving her, he would be invalidly married in the eyes of God, although he would be validly married in the eyes of the Church. He would have to prove his defective intention in a Church court before the parties would be recognized as actually free to marry. Nevertheless, before God the marriage never was a marriage and each party

11. J. Catoir, "The Church and Second Marriage," *Commonweal*, April 14, 1967, pp. 113-116.

would still be free. The conflict would be more serious if the man who simulated consent had afterwards, being really free, contracted a valid marriage with another woman. In the external forum the first woman would be considered his legitimate wife; he would be bound to live with her and forbidden to have any relations with the second one. In conscience, before God, the second woman would be his real wife and there would be no possibility of revalidating the first marriage.

At this point Catoir asks two pertinent questions and answers them. Is it possible for the parties to such a marriage to consider themselves true members of the Church? Are they validly married when there is a defect in form?

A person becomes a member of the Church through Baptism, and by this sacrament gets the right to receive all the others. According to the existing law the penalty of excommunication is incurred by those who attempt marriage again after civil divorce. However, this penalty cannot be incurred by a person who has not at the same time committed a grave sin. The *ipso facto* excommunication which falls upon both the person who marries after civil divorce and the cooperating spouse must be interpreted strictly. The penalty could not apply in a case where there was no sin committed, and it cannot be a sin to exercise one's natural right to marry if one is truly free. This is true even if society erroneously regards one as having already been married. In the case envisioned Church law merely presumes the validity of the first marriage; it does not state that this presumption of law is an incontrovertible fact.

If a woman is certain that she was defrauded in such a way that her marriage was no marriage at all in the true sense, she must try to overthrow the presumption, i. e., prove her case in the Church court. If she cannot present the necessary witnesses or other proofs to accomplish this, she cannot be blamed for taking exception to the impersonal presumption which operates against what she knows to be the truth. Should she in this predicament decide to marry again with a clear conscience, it is difficult to see why this act should separate her and her new spouse from God.

How could the second marriage be valid if a priest could not marry them? Naturally a priest would not be permitted to

marry someone who has been previously married and who has not had that marriage annulled by the Church. Canon 1098 of the Code, however, offers some relief. This Canon states: "If it is impossible without grave inconvenience to send for or to go to a pastor or Ordinary or a priest delegated by either of these to assist at a marriage, another priest who can come, should be called upon and he should assist at the marriage together with witnesses but *the marriage would be valid in the presence of the witnesses alone.*"

Here we are describing a situation where because of grave inconvenience no priest is "available" to perform the marriage rite. The classic example would be the case of the man and a woman alone on an island. There is no priest available, but the two parties are free to marry, and they want to marry. In such case they merely exchange consent and confer the sacrament on one another. In a less dramatic setting if a priest was not available the marriage would be valid in the presence of the witnesses alone. Couples therefore who marry before a civil official and two witnesses because no priest can marry them, have an excellent argument in this Canon to justify their belief that they have enjoyed a valid reception of the sacrament of matrimony.

The judicial arm of the Church is not different from that of the state. It can very often be a faulty instrument of justice, not by design but simply because it is so human and so limited.

VI. The question of brother-sister relationship

Traditionally, if it was unreasonable for an invalidly married couple to separate, they were obliged to live like brother and sister. Today a growing number of theologians would not consider a brother-sister relationship as an invariably necessary prerequisite for the reception of the sacraments. They certainly do not accept the Freudian theory that continence is impossible or harmful for there are too many examples to prove the contrary. Yet they maintain that although a life of complete continence with the help of grace may be possible for some, it might not be possible for all for a variety of reasons.

Evidently, many persons especially those with sexual experience may find it practically impossible to practice complete continence.

Even for consecrated celibates, good will and the special grace of their vocation are not sufficient to practice their celibate chastity. They are required to avoid certain relations with persons of the opposite sex and practice rigorous asceticism. If priests and religious in ever-increasing numbers, endeavouring to live celibately under optimum conditions of nature and grace find it difficult to do so, how can we honestly expect such a life from those who are not called to celibacy and hence do not enjoy all the helps that celibates enjoy?

When couples are permitted to live together as brother and sister, this means, in practice, allowing them to be all that a husband or wife should be to each other. They are allowed to love each other deeply. In other words, the re-married partners are permitted to live daily in a manner that is conducive to the violation of their former marriage vow. A pastoral practice which permits and even encourages some expressions of the marital relationship without, at the same time, allowing others, seems to be unrealistic, especially when we take human nature into account,

The Gospels, and the Epistles of St. Paul, describe celibacy as a state to be freely chosen. Jesus says that "not all men can receive this precept, but only those to whom it is given".¹² While Clement of Alexandria understands this to mean that the abandoned spouse is advised, but not obliged, to remain continent¹³, the current discipline understands that abandonment means, for the innocent spouse, a kind of obligatory vocation to the state of celibacy. It is doubtful how such a vocation can be theologically justified. Imposed celibacy has never been appreciated in Christianity. The Church has always endeavoured to safeguard absolute freedom in the choice of celibacy. Why cannot this policy be applied to those whose marriage has failed?

In a "principalist" world view we cannot speak of genuine conversion of heart without total external change. In the present case this view would imply that abstention from sexual intimacy is a necessary sign of conversion because sexual acts are immoral.

12. *Mt* 19: 11.

13. *Stromata*, III, 6, 50.

The "principalist" view places undue emphasis on the external act. A couple may live a good Christian life but if they fail to abstain from sexual intimacy they are to be regarded as unrepentant. But we can look at this problem from a different point of view. A person-centred morality and spirituality can envisage true interior conversion without a change of external circumstances.

Even if we grant that serious sin was committed at the time of second marriage we can still visualize the possibility of authentic conversion, while at the same time recognizing that a permanent situation of a family has arisen and that this permanent situation cannot be changed by conversion. The couple can be quite sincere when they state that they are very sorry for their situation, but can do nothing about it.

This conclusion is based on the theology of "imperfect moral response" or tension morality. Moral response occurs not in a vacuum but in a concrete situation. The perfection of this response is not to be gauged by external criteria alone. The subjectively perfect response to God can fall short of the objective response demanded by the law. Hence it is incorrect always to identify God's will for a person with the demands of the law. What is the will of God with regard to the invalidly married couple? Does He always want them to separate? Does He invariably demand of them that they should live like brother and sister? Or does He want them to be saved and sanctified within the family situation they have created? Although others can help them, it is only the couple who can, after sincere prayer, discern God's will in this regard. If a couple are sincerely convinced that God does not demand their separation or their living together like brother and sister, and if they otherwise live a good Christian life, there seems to be no reason why they should be denied the sacraments.

The theology of "imperfect moral response" or tension morality is based on the realization that sin is present in man's heart and in the structures of society so that at times an individual may not be able to do what he would have done if there were no sin. Because of the existence of sinfulness a person here and now for grave reasons might not be in a position to

do what objective morality fully requires. An example would be the phenomenon of polygamy that exists in some missionary areas. Some people in these countries may not, by the law of the Church, be able to embrace Christianity after giving up polygamy. In this case there seems to be no need to demand an immediate departure from polygamy as a condition for conversion. At least for a time polygamy could be tolerated as a lesser evil while working for its ultimate abolition.

Peter Chirico, in a thought-provoking article in *Theological Studies*, distinguishes between the morality of basic human intentionality and the morality of external acts¹⁴. Morality of basic intentionality concerns man's inner desire and will towards certain values. This morality is always binding and a person must always affirm its values so far as he can, within his human limitations. Thus, it is always held that a man should love the truth and desire to be more truthful. To desire to be a liar is a denial of one's very being.

However, although we affirm that a man must always strive toward the total inner acceptance of those values, we must admit that human weakness makes it impossible for him to do so. He cannot be totally attached to the truth; he cannot totally affirm any single value of the moral law. If it is accepted, however, that he cannot realize all these values in a perfect manner here and now, he is expected to grow toward the total acceptance of them.

A different situation confronts us in the area of external action; for if we can speak relatively easily of certain values that a man may never interiorly reject, it is more difficult to assert that certain specific external acts must always be avoided because they invariably represent the rejection of an imperative of the moral law. On account of a number of factors it is impossible, at least in some cases, to make a simple identification between a given external act and a rejection of an absolute imperative of the moral law.

14. P. Chirico, "Tension, Morality, and Birth Control," *Theol. Studies*, 28 (1967) pp. 266-274.

In tension situations, the Christian must be able to identify the basic moral values and to recognize the present tension between these values in concrete external situations. Further more, he must affirm all the values. He may not pick and choose. Internally he must truly desire to implement them all.

Even in the external order the Christian must make an effort to implement all the values involved despite his moral incapacity to do this in full. To accept the disappearance of one of the values complacently is never permitted. In practice, this may mean that the Christian continually realizes the more basic and pressing values while exerting every effort to achieve the other values as circumstances allow. Once he does this, he has no reason for despair. When he honestly does what he can in such moral dilemmas there is no sin, for there is no wilful turning away from God and creation. Ultimately a tension situation must be seen as a challenge to growth. It demands blood and tears, the effort to transcend current weakness, a forced march toward the implementing of all the obligations.

In the case of certain second marriages, there is possibly a tension situation: tension between the obligation of rectifying the previous marriage by separating from the second partner and the obligation of not separating because of dire consequences to the spouses and the children. In similar situations it is not rare to find another tension, namely, between the obligation not to have sexual relations and the moral impossibility of not having them at all. It is a tension between an obligation and the incapacity to fulfil it in its entirety. It is true that the persons in question have brought themselves to this state of incapacity. But the fact remains that they are in it. They are not excused for placing themselves in this incapacity. They have to be sorry for it and do penance. They are in a situation in which they have a moral obligation not to separate and in which they experience a moral impossibility to avoid all sexual relations. Theirs seems to be a predicament which is tolerated by God in order that a greater evil may be prevented.

To deny the sacraments to those who sincerely aspire after God because they have failed to attain the minimum of objective moral standard is to confuse an objective moral standard with a

faith standard which should be the norm for the administration of sacraments. The failure to reach the objective moral standard does not *ipso facto* mean failure to reach the required faith standard. Catholics who seriously implore forgiveness from God have the necessary dispositions for a fruitful reception of the sacraments notwithstanding the fact that they may not be able to change the concrete circumstances of their life.

VII. A dynamic view of the dispositions for sacraments.

Sometimes, at least, we need to apply in our pastoral care a dynamic concept of the requirements for the reception of the sacraments. Conversion generally is a process that takes place at the centre of a person. His past life may be faulty. It can happen, for example, that his previous marriage has broken down, inculpably or culpably. Repentance cannot always make up for the past by negating past history. It is sincere and accepted by God if there are indications of an honest willingness to do better. The acknowledgement of one's mistake and the awareness of having to get on with a faulty history can be forms of penance that purify the heart of a sinner,

It is not always correct to think that a person can meet the objective standard if he really wants to. The freedom of man is limited and he must seek to respond to God's call within the framework of his limitations. Hence pastoral care must include within the dispositions for sacraments the essential limitations of man which express themselves in human disasters such as unrectifiable marital unions.

The Church has applied a dynamic view of the dispositions for sacraments while dealing with our separated brethren. The Decree on Ecumenism states that the sacraments are both signs of unity and a source of grace¹⁵. The Directory concerning Ecumenical Matters applies the principles in greater detail. Among other things the Directory states that "the Church can, for adequate reasons, allow access to the sacraments (mainly the Eucharist, Penance and Anointing of the sick) to a separated brother. This

15. *Decree on Ecumenism*, n. 8.

may be permitted in the danger of death or an urgent need if the separated brother has no access to a minister of his own communion, and spontaneously asks a Catholic priest for the sacraments – so long as he declares a faith in these sacraments which is in harmony with that of the Church, and is rightly disposed¹⁶.

What is the meaning of “being rightly disposed?” It certainly does not mean conversion to the Catholic faith in the usual sense of the word for it would go counter to the spirit of ecumenism. The separated brother remains a member of his own communion, even when he asks for the sacraments. The past regulations regarding heretics and schismatics have been replaced by the awareness that the sacraments are means of grace and that concrete life-situations cannot be changed at will. Disunity among the Christians is a historical fact and this need not interfere with the aim of the sacraments which is sanctification. According to this decree Eucharistic participation does not always demand unity either in doctrinal matters or in social moral behaviour. Even Protestants who may be divorced and remarried are not excluded always from the Eucharist. They may receive Holy Communion even without totally accepting the Catholic teaching.

It seems possible to draw a comparison between the situation of a separate brother and that of a divorced and remarried Catholic as far as dispositions for sacraments are concerned. Integral dispositions are not always demanded from a separated brother. Why should we always demand them from our Catholic brethren?

VIII The practice of the separated brethren

The ecumenical spirit invites us to consider seriously the tradition in other Churches especially in the Orthodox Church where there is no preoccupation with the validity of marriage when it is, for all practical purposes, dead. If there is no hope of saving a previous marriage the Orthodox practice advises the abandoned partner to live in life-long celibacy. If such a life is impossible “Oikonomia” is invoked and the abandoned spouse is permitted to remarry or to remain in the second marriage if it has been

16. Cf. Directory published in May, 1967, by the Secretariat for Promoting Christian Unity, n. 55.

contracted "Oikonomia" is similar in meaning to the virtue of "epikeia" in the best Catholic tradition. While sticking strictly to the principle of indissolubility and of saving a marriage whenever possible, the Orthodox practice permits exceptions in extreme cases, taking into account God's economy of salvation and trusting in His mercy.

In very difficult cases the main questions asked by Orthodox theology are not whether the previous marriage can be dissolved but whether the first marriage is really dead, whether the person concerned can answer the call to lifelong celibacy and whether the new marriage situation is apt to take the person closer to salvation. According to Orthodox tradition, the application of "Oikonomia" whenever the good of the person requires it urgently is not a denial or ignoring of the indissolubility of marriage. It only imposes a greater obligation on the Church to promote reconciliation whenever possible and to make greater efforts to foster lifelong fidelity.

IX. The problem of scandal

Scandal to the community should, at all costs, be avoided. But it is difficult to understand why there should be a conflict, at any time, between the spiritual good of the individuals and the common good of the community. The Good Shepherd does not want the "lost sheep" to renounce its right to life; rather, He leaves the ninety-nine in the desert exposed to some danger and goes in search of the lost one. The "greatest good of the greatest number" as a notion of the common good does not seem to tally with the mind of Christ.

Those who are easily scandalized in this matter view all invalid second marriages in older categories of "intrinsic evil" and "cooperation in evil." It is asked whether persons who are invalidly married and who are seriously trying to live the Christian life are scandalizing the people of God if they cannot separate or cannot live like brother and sister. Actually many people are more scandalized by the refusal of sacraments to them while many who are clearly greater "public sinners" receive the sacraments.

The inability to forgive and help people who are in unrectifiable situations is a serious blot on our Christianity. Is it not scandalous to deny sacraments, the chief consolations that the Church can offer, to those who most need them? When invalid second-marriage Catholics of good will need all the help and consolation they can get so as to rehabilitate themselves, they are ostracized by their fellow Christian in the name of fidelity to

Christ: If the medical profession were to refuse treatment to patients who caused illness to themselves it would be strange indeed. Instead, it provides ample facilities for the rehabilitation of such people. When it comes to the problems of sexual behaviour in marriage we are not prepared to encourage and re-educate people. This policy is hardly in accord with the principles of love and tolerance which we preach from the house-tops.

There are signs that the present-day generation possesses a high degree of mercy and understanding for the limitations of man and a deeper grasp of real sinfulness. If there is no laxity or ill-founded indulgence in our pastoral approach in this matter, a change of practice in favour of greater mercy and compassion is not likely to evoke negative reaction from the generality of the people of God.

Conclusion

Responsible pastoral care means that the pastor be committed first and foremost to the greatest possible spiritual good of those entrusted to his care. Generally speaking this is achieved through strict adherence to the requirements of law. At times it can happen that he has to depart from strict observance of the law in order to achieve this goal (*epikeia*). Allowing his pastoral care to be solely guided by external laws which are admittedly inadequate to express the reality of Christian marriage is tantamount to betraying his pastoral responsibility and imposing of hardships not always demanded by Christ Himself. It would be a travesty of his pastoral duty if a pastor invariably dismissed all second-marriage Catholics as "public sinners" and hence unworthy of participation in the life of the Church. This would be nothing but an unpardonable identification of imperfect positive legislation with the will of God.

Whatever the fate of the proposals made in this article, nobody can ignore the tragic cases of irregular marriages which call for a realistic answer. Even if the conclusions presented here are not accepted, still the data offered here may provide elements for arriving at a viable solution. The presence in our midst of thousands of our brothers and sisters who, in spite of their present good will, cannot hear a word of salvation represents a real challenge to the Church whose only office is to ensure God's grace to all men in every situation.

Book Review

1. *Where is the Pope?* (by Gerard Bessière, illustrated by Piem, Burns and Oates, London, 1974, pp. 144. £ 2. 95)

Reminiscent of Morris West's novel *The Shoes of the Fisherman* but without its literary charm and theological depth, this book by Gérard Bessière, a popular French preacher, offers us something like theological fiction, but is no less a meditation book. West's Pope goes out into the city of Rome to meet his people; Bessière's goes out of Italy to Paris. This is an image of the Pope of the future and in a way of the Church of the future, however distant that future may be. It should be a welcome relief to those weary of dry theological literature and of the rarely positive criticism of the Church's structures in the past few years.

The story is simple and short. "The Pope has disappeared", run headlines in all the news papers. Rumours, speculations and theorizings abound. Only a year earlier had Hyacinth been called to Rome during the conclave to accept the office of the Pope. He did, but took no new name and refused the tiara. He tried to reform and educate those around him but with little success. The suffocating air of the Vatican became too much for the "new prisoner". He writes: "I have to leave the Vatican immediately so as to try to live my role within the Church according to the Gospel. I remain the Pope. I shall let my thoughts be known just as soon as I judge it apposite. To everyone I wish the spirit of God" (35). He is to say later: "I think the Pope has 'stirred up' the Holy Spirit in a wild gesture of freedom, and that in three years, ten years, Catholics are going to rediscover Christianity with utter astonishment" (130-1). Pope John and Paul VI began to break the walls of the prison and started dialogues with societies and States. The new Pope, declare the news papers, is crossing another frontier which "confined him within the anachronistic limitations of outworn institutions. It is the prison of an office suffering from hardening of the arteries that the 'prisoner in the Vatican' is attempting to escape from today - by plunging into the anonymity of the contemporary crowd" (38).

With 300 francs he escapes into Paris and there obtains employment with a loading and unloading undertaking. During his stay on the 8th floor of a servants' apartment, amidst the joys and difficulties of ordinary working men or jobless people,

he becomes aware of the meaninglessness of certain 'sacred' words in Christianity: the Apostolic Holy See, the Guardian of the Deposit of Faith, Your Holiness, the Prince of the Apostles etc. "Why all that pretentious rhetoric, that froth, which has caused the Gospel so soon to be forgotten...?" (47). Regularly he helps a lady to carry her shopping-bag to the 7th floor. He is soon accepted by his neighbours. He tells them: "I'm a Christian, or rather I'd like to be a Christian" (52-53). So would they. For them Christianity means: "From time to time we meet up with a few friends and Marcel (a married priest who considers himself still very much a priest). We talk, we read a bit of the Gospel, we pray or we just don't say anything. It helps" (53-54). The Church they regard as "God putting himself within the reach of everyone" (81). He joins their meetings "to find men and women again at last, to find the modest simple life, to find Christians..." (55). In those meetings they share their concerns, their joys and sorrows; they speak about the Christian Churches which produce document after document about justice while they remain silent when the Americans drop bombs in Asia to defend Christian civilisation; they discuss the decampment of the Pope. They are not opposed to a Pope who would be the "president of Charity" like the Popes of early Christianity. They envisage him as someone who is "concerned that there should be charity everywhere". Marcel sketches such a Pope: "A simple man without all that fuss of the Vatican who would be there to keep watch over the world, to be near to everyone to remind people of the Gospel, to go out to those who needed him—that sort of thing... A man who was sort of dispossessed, who didn't play the power game, what radiance he would have; He'd change the world" (62). The Pope himself looks at his departure from Rome as a departure of all of us: "it's all of us leaving, even those who aren't Christians. Or perhaps there's something deeper in the world that has moved and the Pope's going is a sort of symptom" (63). He is happy with those meetings and feels good to see people whose faces reflect each other's light.

Very soon the Pope finds himself among the jobless because his interim job is over. Through the services of Marcel he gets work as a taxi driver. Thus he meets people of all sorts: silent passengers, people who have watched death in hospitals, students of theology who discuss infallibility. He shares the anxiety of a doctor rushing to save the life of a little girl, the concerns of farmers threatened by government policies. He attends Sunday services in a laundry turned into a Church - now overcrowded. When students of theology discuss the problem of infallibility, his contacts with little children make him aware of another type of infallibility: "Childhood-...the total freshness of the world. Was that real infallibility?" (91).

While he continues to ply his taxi rides in Paris tension is mounting in Rome. He is surprised at the news of "an extraordinary synod" of all presidents of episcopal conferences hastily summoned. He smiles at the thought of democracy in the Church, a democracy "of common denominators to achieve insignificant surface unanimities" (121). He decides to return to Rome but as he does not have enough money for the ticket, he continues his taxi driving. But he is still a taxi-driver, isn't he? (see p. 2). An anxious passenger expresses his fear that the representatives of the Church are ruining her. The Pope assures him that: "It's only a certain type of Church that's coming to an end, and another is going to be born. It wouldn't be the first time in history" (127). The Pope remains optimistic about the future. "Yes, but Christ, don't you think he has more of a future than a past? ... People are going to rediscover Christ and the Gospel in a much deeper and more human way than in the past. Like a new planetary humanity—but with ever new ways of seeing. Perhaps a lot will have to be forgotten. And then we'll see a new Christianity that will turn the world upside down as it turned the shores of the mediterranean upside down in the first century" (128). Instead of leaving for Rome, as he had planned earlier, the Pope merely sends a telegram to the Secretary of State who would recognize the message as authentic: "Veni Creator Spiritus. Convocation of assembly illegal. Apostolica Sollicitudo III. Am envisaging council. Shall specify place. Pentecost. My blessings" (140). He goes back to his apartment. The story ends there.

One might say that this is all wishful thinking, a dream. Perhaps dreams are what we need today. Abandoning the old habits, trusting in the Spirit, if we launch out into the unknown we shall see that some of the dreams come true. We shall give reality to the dreams of God for humanity, for the new humanity in Christ. Bessiere's Pope thinks of his leaving as the symbol of all of us leaving. Leaving what? Perhaps leaving the presbyteries, the Bishops' palaces. Each one of us has his own 'Vatican', out of which he needs to go out to discover Christ in the lives of men. Not that all can be taxi-drivers, or that the Church would be changed by just that. But there is more in Bessiere's story than meets the eye. He is telling us that it is by living in the midst of the joys and sorrows of the people of today that we can rethink our ministry, and not from our ivory towers, from our 'Vaticans'. Shall we take up the challenge?

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